

THE
ENGLISH MUNICIPAL CODE:

BEING THE
MUNICIPAL CORPORATIONS ACT, 1882

(45 & 46 VICTORIA, CHAPTER 50);

WITH HISTORICAL INTRODUCTION, NOTES, COMMENTS,
AND REFERENCES;

THE GENERAL ORDERS OF THE JUDGES
UNDER THE CORRUPT PRACTICES (MUNICIPAL ELECTIONS) ACT;

A STATISTICAL APPENDIX,

AND

A COMPREHENSIVE INDEX.

BY

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OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW

AND

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AUTHOR OF "ENGLISH MUNICIPAL INSTITUTIONS—THEIR GROWTH AND DEVELOPMENT,"

AND EDITOR OF "THE MUNICIPAL CORPORATIONS COMPANION AND
YEAR BOOK OF STATISTICS," &C., &C., &C.

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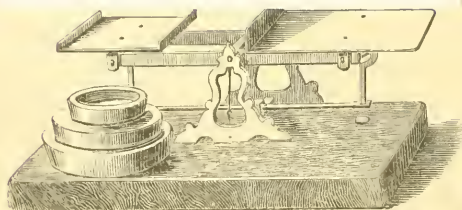
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WATERLOW & SONS LIMITED, LONDON WALL, E.C.

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TO THE
RIGHT HON. SIR WM. VERNON HARCOURT, Q.C., M.P.
ETC. ETC. ETC.
HER MAJESTY'S SECRETARY OF STATE FOR THE HOME DEPARTMENT,
EQUALLY DISTINGUISHED AS
A LAWYER AND A STATESMAN,
THIS VOLUME IS RESPECTFULLY DEDICATED
BY
THE EDITORS.



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P R E F A C E.

FIFTY years' experience of the working of the Municipal Corporations Act of 1835 revealed many shortcomings. These were chiefly due to the difficulty of dealing with existing laws, statutes, and usages, charters, grants, and letters patent, so as to effectually provide against injustice when bringing their operations within the scope of a uniform measure. Progressive legislation effected many important changes which required corresponding modifications of the original Act. The Municipal Corporation Elections Act, 1869, shortening the term of residence and admitting women to the municipal franchise, the Ballot Act, and the Corrupt Practices (Municipal Elections) Act, 1872, the Municipal Elections Act, 1875, the Municipal Corporations (New Charters) Act, 1877, the Parliamentary and Municipal Registration Act, 1878, and the Town Council and Local Boards Act, 1880, diffused the law through many channels and eventually rendered consolidation a matter of imperative necessity.

While the Act dealt with in this volume, is, to use the words of Mr. Hibbert, the member for Oldham, one intended "merely to consolidate all municipal Acts relating to England," it at the same time effects by no means unimportant alterations and amendments, most of which are more particularly noticed under the several sections in which they appear.

The Act has now been before the public for some weeks, but it is doubtful if many of the changes effected by it have obtained general notice. The principal of these are as follows:—

The Mayor may be elected “from the aldermen or councillors, or persons qualified to be such”—in other words, the Council may choose the Mayor from the general body of burgesses or non-residents qualified for election as councillors, to the exclusion of members of the Council (*See* section 15 (1) at page 33).

All questions at, and acts of a Council, are to be decided by a majority of the members present *and voting* (*See* Schedule II., paragraph 10, at page 38).

Notice *in writing*, to the Town Clerk, is required for the resignation of a corporate office (*See* section 36, at page 49).

The salary of a Recorder may be increased without the necessity of reappointment or a new appointment (*See* section 163, at page 143).

The powers of the Recorder are given to the deputy Recorder (*See* section 168 (9), at page 148).

The Watch Committee is not to exceed in number one-third of the Council (*See* section 190 (1), at page 159).

Assaults on Borough Constables are treated as provided for in section 81 of the Act of 1835, notwithstanding intervening legislation (*See* section 195 (1), at page 161).

Borough Constables may take bail by day or night (*See* section 227, at page 182).

There are other changes which remove doubts as regards identity of candidates or voters raised in many of the cases decided, and which will tend to render this Act simple and efficient in its working.

The first seven Schedules have been interpolated with the various Sections of the Act having relation thereto. The Index has been prepared in a form which it is thought will greatly facilitate reference to the body of the Act. The List of Cities and Boroughs to come under its operation on January 1st, 1883, comprises the population of each place according to the census of 1881. The Time Table sets out the principal duties of municipal administration which are associated with fixed periods of the year.

It has been the earnest desire of the Editors to render the present work a complete legal and practical text-book, to avoid unnecessary prolixity, and to afford safe guidance and useful information to all persons more immediately interested in the municipal institutions of the country.

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ADDENDA ET CORRIGENDA.

Section 22, and the Second Schedule, paragraph 3 (at page 37). Add to comment following: "This, however, applies only to meetings called by the mayor on his own initiative."

Section 155 (subsection 2). The word "severally" in comment following should be "socially."

Section 215. Add to comment following: "By section 14 of 3 & 4 Vict. c. 88 (1840), an agreement by a borough for consolidation of its police force with the county must be sealed with the common seal. Six months' notice must be given of proposed termination of the agreement; but such agreement, although it may be entered into voluntarily, cannot be terminated without the sanction of the Secretary of State (*See* 19 & 20 Vict. c. 69, s. 20)."

In comment following section 20, at page 36, for *Reg. v. Priest*, read *Prest*.

THE ENGLISH MUNICIPAL CODE.

THE NATURE AND CONSTITUTION OF MUNICIPAL CORPORATIONS.*

A CORPORATION is a franchise possessed by one or more individuals who subsist as a body politic under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. The object of the institution is to enable those constituting it to act by one united will, and to continue their joint powers and property in the same body, undisturbed by the change of members, and without the necessity of perpetual conveyances, as their corporate rights pass from one individual to another. All those composing a corporation, and their successors, are considered in law but as one person, capable under an artificial form of taking and conveying property, contracting debts and duties, and of enjoying a variety of civil and political rights. One of the peculiar properties of a corporation is the power of perpetual succession, for in the judgment of law it is capable of indefinite duration. The rights and privileges of the corporation do not determine or vary upon the death or change of any of the individual members: they continue as long as the corporation endures. It was chiefly for the purpose of clothing bodies of men in succession with the qualities and capacities of one single artificial and fictitious being that corporations were originally invented, and for the same convenient purpose they have been brought largely into use. Corporations, private as well as public, or municipal, were well known to the Roman law, and they existed from the earliest periods of the Roman republic. The powers, capacities, and incapacities of corporations

* From "English Municipal Institutions—their Growth and Development," by J. R. Somers Vine, F.S.S.: Waterlow and Sons Limited, London Wall, E.C. (1879).

under the English law, do, indeed, very much resemble those under the civil law ; and it is evident that the principles of law applicable to corporations under the former were borrowed chiefly from the Roman law, and from the policy of the municipal corporations established in Britain and the other Roman colonies, after the countries had been conquered by the Roman arms.

The first division of corporations is into *aggregate* or *sole*. Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever. Corporations sole consist of one person only and his successors, and are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural person they could not have had. Another division of corporations, either sole or aggregate, is into *ecclesiastical* and *lay* ; while lay corporations are again subdivided into *civil* and *eleemosynary*. The civil are such as are created for a variety of temporal purposes, and under this head are included municipal corporations. The eleemosynary sort are such as are constituted for the perpetual distribution of the free alms or bounty of the founder of them to such persons as he has directed.

Corporations by the civil law seem to have been created by the mere act and voluntary association of their members. But, in England the consent of the Crown is absolutely necessary to the creation of any corporation ; that consent, however, may be either expressly or impliedly given. The sovereign's implied consent is to be found in corporations which exist by force of the common law, to which former kings are supposed to have given their concurrence ; common law being nothing else but custom arising from the tacit assent and usage of the whole community. Another method of implication, whereby the consent of the Crown is presumed, is as to all corporations by *prescription*, such as the city of London, and many others which have existed as corporations, time whereof the memory of man runneth not to the contrary, and therefore are looked upon in law to be well created. For, although the members thereof can show no legal charter of incorporation, yet in cases of such high antiquity the law presumes that there once was one, and that, by the variety of accidents which a length of time may produce, the charter is lost or destroyed. The methods by which the consent of the Crown is expressly given are either by Act of Parliament or charter.

When a corporation is created, a name must be given to it, and by which name alone it must sue and be sued, and do all legal acts.

After a corporation is so formed and named, it acquires many powers, rights, capacities, and incapacities. As—

(1) To have perpetual succession.

(2) To sue or to be sued, implead or be impleaded, grant or receive by its corporate name, and do all other acts as natural persons may.

(3) To purchase lands, and hold them for the benefit of themselves and their successors.

(4) To have a common seal.

(5) To make bye-laws or private statutes for the better government of the corporation, which are binding upon themselves, unless, contrary to the laws of the land, or inconsistent with their charter, or unreasonable, and then they are void.

THE HISTORY OF THE ENGLISH MUNICIPALITIES.*

MUNICIPAL CORPORATIONS did not exist in England until 1439 ; but although that is the date of the earliest known charter of incorporation, boroughs, the citizens of which exercised powers of local self-government, existed from the earliest periods of British history. There is no doubt that such municipalities may be traced back to the Roman occupation of Britain, and the organisation of these seems to have been, at least in part, adopted by the Anglo-Saxons. Although great obscurity surrounds the early constitution of the English municipalities, there are valid reasons for believing that the "freemen" or "burgesses at large" were the governing body. The Anglo-Saxon forms of local organisation were legitimate ramifications of the common-law rights of the free population. It is at all events certain that at that time, while the county districts or shires were under the jurisdiction of shire-reeves (whence sheriffs), the boroughs were under the rule of *borough-* or *port-*reeves. As the counties had their shire-gemotes or sheriffs' towns in which their local affairs were discussed and regulated, so the latter had their burgh-mote or court-leet of the borough. The one assembly was composed of the freeholders of the county, and the other of the freemen resident in the borough, and both were charged with essential duties to their im-

* This Historical Sketch is (with some few additions) taken from "The English Municipalities—their Growth and Development," by J. R. Somers Vine, F.S.S.: Waterlow and Sons Limited, London Wall, E.C. (1879).

mediate communities and responsible obligations to the *witena-gemôt*, or national council. The individuals composing these communal associations were men who had a stake—inconsiderable though it may frequently have been—in the country, or, in homely words, “had something to lose;” hence the irresistible impulses which in later times compelled despotic administrators, much against their will, to formally recognise the enjoyment of “peculiar privileges” which had thereto been exercised as “undisputed rights.” It does not appear that the “borough liberties” of the Anglo-Saxons depended for their origination upon the favour of the sovereign. They were the natural outgrowth of social necessities. The Municipal Commissioners (of 1833-5), in their report, adduced only two instances of grants of local charters by Saxon kings—that of Athelstan to Beverley and that of Edward the Confessor to the Cinque Ports—neither of which, from the alleged nature of their contents, can be accepted as satisfactory evidence of the creation of municipal franchises by monarchical condescension prior to the Norman era.

At the time of the Norman conquest the county sheriff was supplanted by the *vice-comes*, while the borough- or port-reeve gave place to the bailiff (or mayor), the new officers being appointed by the king instead of by the freeholders or resident freemen, as the case might be. With this exception, however, it would seem that William the Conqueror did not alter the local institutions of the country to the extent that is sometimes imagined. The two leading records which establish this position are the laws compiled by this sovereign and the Domesday Book. In the former the same features are traceable as in the Saxon laws. The king’s peace is to be preserved, the freemen are to be sworn to their allegiance, the payment of *scot* and *lot* (or local rates) is mentioned, the watch and ward in boroughs is enforced, the provisions of the old law for selling in the presence of witnesses are repeated, as well as the general system of giving pledges for good behaviour which was so remarkable a characteristic of the Saxon system. Distinct traces are also to be found of the law which subsequently assumed much greater prominence and contributed so materially to the rise and growth of towns, namely, that “all bondmen who remained without claim for a year and a day in any borough, &c., should be free.” In Domesday Book boroughs and burgesses are frequently mentioned, and it is clear from the way in which this is done that the local government of the towns was separate from that of the counties, and that it was vested in the burgesses presided over by a bailiff. At a

later period the "burgesses" were, in too many boroughs, a small select class, excluding the great mass of the inhabitants from the right of local government, and exercising the powers which they thus obtained for their own profit and advantage. But at this early period the test of municipal citizenship continued to be the same as it was in Saxon times, and, broadly speaking, was in fact very nearly the same as it is at present. An excellent authority* thus refers to burgessship as it existed in the tenth and eleventh centuries :—

"There are entries in Domesday, in almost every county, which establish that burgess-ship did not depend upon tenure, because many burgesses are described as belonging to other manors. If tenure was the basis of their right, they would have belonged altogether to the manors, and would not be described of the boroughs, because they did not hold of them. But if residence made them burgesses, then the entry is explained reconcilably with facts, because they would in respect of their *resiancy* be burgesses in the place of their residence, but would be entered under the manors of which their lands were held. There are also, numerous instances in which, the burgesses being distinctly connected with their *houses*, and the latter being "inhabited," it is impossible not to infer that they were householders. They paid the custom of *gable* for their houses, and other taxes. In the entry as to Canterbury, 14 burgesses are mentioned instead of their houses; and in Thetford, Norwich, and other places, the identity cannot be mistaken. It is also clear from many passages that *all* the householders were *not* burgesses. Peers, ecclesiastics, minors, villains, and persons of infamous character were excepted from the privileges and also exempted from the duties of burgessship; many houses are therefore mentioned in the returns which had not burgesses. Those only who bore their share of the burthens of the place, or, according to the laws of the Saxons and of William the Conqueror, *paid seot and bore lot*, were entitled to the privileges; those who from poverty or other cause did not pay the charges or serve the public offices of the borough being excluded. It would have been inconsistent with the whole system of the law at that time if non-residents could have been burgesses; and therefore we find throughout this document that the burgesses were resident, and in that respect distinguished from the members of the trading companies who might be non-resident."

A careful examination of Domesday Book shows clearly that at the time of its compilation, no municipal *corporations* were in existence, although several ecclesiastical corporations are mentioned. During the reign of William II. no municipal grants nor any changes in the municipal institutions appear to have been made. Henry I. granted charters to several boroughs, but they were not charters of incorporation. They were principally devoted to enlarging the powers of local self-government possessed by the burgesses of the places to which they related. About this period, or soon afterwards, a very important change in their government took place. The bailiff appointed by the king was charged with the duty of assessing and

* Merewether and Stephen's "History of Boroughs, &c.," 1833.

collecting the king's taxes due from the borough. As might have been anticipated, this was often made the cause or pretence of great oppression, and, in order to get rid of it, many towns offered to pay a larger sum than had previously been exacted from them, on condition that they might elect their own chief magistrate and assess themselves. These offers were too tempting to be resisted by sovereigns who were often sorely in want of money, and the towns were thus allowed to re-purchase the right which they had possessed in Saxon times. The elected officer was sometimes called by the old name of port-reeve; but he was more generally known as the mayor. At this time the merchant guilds who afterwards assumed so large a share in the government of many, perhaps of most municipal corporations, had no connection with the constitution of the boroughs. Down to the reign of Henry VI., the right of burgessship, and, after the boroughs were represented in Parliament, the right of voting for Parliamentary representatives continued to be vested in the whole body of resident inhabitant householders, being freemen, paying scot and bearing lot, and doing suit and service in the court-leet of the town or city.

Notwithstanding the slight interference of the Conqueror and his immediate successors with the local institutions of the subjugated country, the introduction of the feudal systems of the continent gradually but surely obliterated the free peasantry, and transferred their independent jurisdictions to the Lords of the Manors. The principal towns were reserved to the Crown, and were known as "Royal boroughs" or "boroughs of ancient demesne"; the inhabitants held their town at fee-farm, undisturbed by the king's officers, and continued, with few exceptions, in possession of their ancient freedoms. The earliest charters were, invariably, simple confirmations of old customs and liberties; special immunities were sometimes conferred, but they were chiefly such as regarded the burgesses in their external relations. What the inhabitants mainly secured in their contracts with the king, in addition to their primary privileges was—freedom from servile duties; free trade and exemption from toll in every part of the king's dominions; that all the land within their limits should be the property of the community—such as was not already occupied by tenements to form common land, of which portions might be saved for building, &c., to the profit of the community and the improvement of the town; that the burgesses should answer to the king for his *ferm* by their own appointed chief officer; that the profits arising from fines, &c., in the borough courts,

should be applied to the common benefit of the townsmen; and that they should be untrammelled in their choice of a mayor, bailiff, or port-reeve. These were the examples of municipal enfranchisement usually cited by the barons in their charters to the smaller towns which they held in fief from the king or those which sprang up under the walls of their castles. The extinction of feudalism eventually brought these baronial boroughs under the direct authority of the Crown.

In the reign of Henry VI., a process was commenced which gradually transferred the power from the hands of the burgesses generally to various exclusive bodies within the boroughs, and ultimately produced the gravest and most intolerable abuses, which were not swept away until the year 1835. In the year 1439 the first charter of *incorporation* to a municipal body was granted to Kingston-upon-Hull. Incorporations did not, however, immediately become general, for this charter is followed by others upon the roll which are not of that kind. It is not, indeed, surprising that there was some disinclination on the part of the towns to receive charters of incorporation, because proof is extant that, even at this time, the corporate bodies which then existed had begun to abuse the powers given to them, and to make usurpations upon the rights of the people. To take a single instance of the spirit which was at work: In 1467 it was found that the companies and liveries of London had been making encroachments upon the privileges of the householders in the wardmotes to such an extent that it was necessary for Parliament to interfere for the protection of the people. And upon the Parliament roll for the same year there is a petition praying for the dissolution of the tailors' guild at Exeter, on the ground that they set the authority of the mayor at defiance, and threatened to reduce the town to a state of anarchy. But although the boroughs showed but slight desire for incorporation, the courts of law were determined to thrust it upon them. In 1466 the Court of Common Pleas laid the foundation of a doctrine from which important results subsequently flowed—that of the creation of corporations by inference or implication—by holding that, "If the king gave land in fee-farm to the good men of the town of Dale, the corporation was good. And so likewise when it was given to the burgesses, citizens, and commonalty, &c." The principle of this decision was afterwards extended, and the charters of our early kings, which merely conferred the right of local self-government upon boroughs, were then construed as charters of incorporation, with very mischievous consequences, as was thereafter seen.

The increasing importance of the House of Commons under the Tudor sovereigns made these princes exceedingly anxious to establish an ascendancy in that assembly. The first mode adopted was to issue writs for the return of members of Parliament to small or decayed towns in which the king or some of his courtiers could exercise a commanding influence. This course was taken to some extent by Henry VIII., and to a much greater extent by Queen Mary and Queen Elizabeth; but the House of Commons at last intervened, and succeeded in putting a stop to these arbitrary and fraudulent enfranchisements of dependent boroughs. The Crown then resorted to another device. As there was no doubt that the right of election belonged to the burgesses, it was clear that if the general body of inhabitant householders could be deprived of their privileges, and if these could be handed over to some select knot who would be under the dictation of the Crown or of some great men in the neighbourhood, the end in view would be obtained as effectually as by the creation of new nomination boroughs. Accordingly, new charters were granted to a number of boroughs. In these the doctrine of the existence of corporations by implication was expanded into that of corporations by prescription. It was falsely recited that they had been incorporated from time immemorial, and under this pretext, and under that of confirming ancient usage, the right of burgessship was either limited to a select and self-electing body, or was extended—and this was quite as mischievous—to non-residents, who were admitted by the governing bodies of the boroughs to the freedom of the town. At the same time—in the reign of Queen Elizabeth—the judges by their decision in the celebrated *Corporations case* with respect to the validity of electors and as to the binding effect of bye-laws made by select bodies in the corporations, laid the foundation for further and, as the result proved, almost indefinite encroachment upon the rights of the burgesses. Stating the matter broadly, it may be said that the effect of these innovations was to deprive the municipalities of their character of local institutions, and to subject them in their character of corporations—the creatures of the law—to the manipulation of judges who were, at this period and during the reigns of the Stuarts bitterly hostile to popular rights and equally bent upon extending in every way the influence of the Crown. It is true that in the reign of James I. an effort was made to check a process by which the right of burgessship, and consequently the right to the franchise, was being gradually involved in inextricable confusion. The famous election committee, presided over by Serjeant Glanville,

decided "that of common right the burgesses were the inhabitant householders, resident, paying scot and lot;" but this decision was lost sight of, or, at any rate, it was never acted upon in the revolutionary times which followed; and, after the Restoration, during the reigns of Charles II. and James II., the process of remodelling the corporations was resumed and prosecuted with augmented vigour. In the words of the learned writers already quoted (and who are entitled to the merit of being the first to place the history of English municipal incorporations on a sound basis)—

"The interference in the reigns of Elizabeth and James I. by charters of the Crown—the decisions of the courts, and the acquiescence of the people—had merged all the borough privileges and jurisdictions in the general notion of *corporations*; and as by these means all their rights were brought under the influence and control of the Crown, the subsequent attack upon them was made comparatively easy. On the Restoration the statute passed for the correction of the corporations afforded ready means for that attack, and a pretext for every species of usurpation. Extensive use was made of the opportunity; the old members and officers of the corporations were displaced; ministers of the Crown, officers of state, and non-residents were substituted; and from the proceedings upon the statute it is obvious that no corporation had any chance of continuing its existence but by a submissive compliance with the wishes of the king. * * * After the success of the London *quo warranto*, the king sent his officers into all parts of the kingdom to terrify the corporations by the threats of similar legal proceedings to give up their charters. The greater portion of them voluntarily surrendered them through the agency of the *select* bodies, on the promise of having new grants from the Crown; against those who were refractory proceedings were instituted. So that at this time the borough rights, which by general misconception and practice had been assumed to be identified with the corporations, were by the acts of the corporations and the surrender or seizure of the corporations submitted entirely to the mercy of the Crown."

There is no doubt that his dealings with the corporations contributed in no slight degree to the downfall of James II. But, although William III. did not imitate his predecessors, he did nothing to correct the abuses which had grown up under them. Indeed, during his reign and those of his successors, much was done to perpetuate and to extend those abuses—not, indeed, by the king, whose interference with corporate rights and privileges ceased with the Revolution of 1688, but by the House of Commons and the courts of law. Again quoting the before-mentioned authority, we find—

"The first (Parliament) in the reign of William III. passed the Act compelling the sheriffs to make the return from the elections according to the rights which had last been determined by the House of Commons, by which means the varying and anomalous *usages* of the different boroughs and the contradictory decisions of committees were sanctioned and confirmed. The House of Commons also—by its resolution—supported the former decisions, however irreconcilable with the charters or the principles of our institutions; and in some instances under the general name of "burgesses" introduced new varieties, according to the agreement of parties or the absurd usages of places that were brought before them. The courts of law relied upon the few early cases to which

we have referred, and the extra-judicial opinions in the reigns of Elizabeth and James ; and they fell into the same course which the House of Commons and the Legislature had taken, adopting the same rules, by which they avoided a discrepancy which might have existed injurious to the character of both, as well as detrimental to the people. The courts, therefore, upheld the same principles, supported usage, maintained the select bodies, sanctioned the non-residents, confirmed numerous bye-laws not in accordance with the charters or with each other, but giving a different constitution to every different borough, and as the greatest and worst innovation of all, gave the stamp of judicial authority to the doctrine of the arbitrary admission of burgesses by the corporations, a principle which had not before been expressly sanctioned by legal decisions. * * * During the reigns of Queen Anne, George I., II., III., and IV., the abuses to which we have referred were fully maintained. Select bodies, common councils, their bye-laws, and non-residents were supported. *Freemen* were substituted for 'burgesses,' and the latter name was applied to burghage-tenants, freeholders, pot-wallers, and inhabitants without any other qualification. The court-leet was neglected, its proceedings disregarded or misapplied. Instead of them, *courts baron* were brought into a prominent situation in the municipal government of boroughs, for which they were never intended. Trade, and the companies and liveries connected with it, particularly in London, were more interwoven with the rights of burgessship than the original constitution of boroughs would justify ; and the unrestrained admission of freemen as burgesses, which was declared to be lawful, laid all the municipal privileges and jurisdiction at the feet of those of whatever party who happen to possess the influence necessary to secure the admission of their friends. Hence in some places a sufficient number of non-resident honorary freemen were admitted to overawe or neutralise the votes of the real burgesses ; making in this manner the important functions of the separate exclusive jurisdictions of boroughs not the means of local government, as they were intended to be, but the tools of party violence and private intrigue."

The general result of these innovations—for so they may be justly described—was that the municipal corporations were, for the most part, in the hands of narrow and self-elected cliques, who administered local affairs for their own advantage, rather than for that of the borough ; that the inhabitants were practically deprived of all power of local self-government, and were ruled by those whom they had not chosen, and in whom they had no confidence ; that the corporate funds were wasted ; that the interests and the improvements of towns were not cared for ; that the local courts were too often corrupted by party influence, and failed to render impartial justice ; and that municipal institutions, instead of strengthening and supporting the political framework of the country, were a source of weakness and a fertile cause of discontent.

Such was the condition of the English municipalities until the year 1835, when Parliament in passing the Act 5 & 6 William IV., c. 76, restored to the inhabitants of the boroughs those rights which their remote ancestors had enjoyed, but of which they had been deprived by a long series of usurpations.

Between the 9th of September, 1835 (the date of the passing of

the first Municipal Act), and the 18th of August, 1882 (the date of the passing of the Consolidation Act, which forms the principal subject of this book) inclusive, no less than 55 Acts, having reference wholly or in part to municipal corporations, received the Royal Assent. Previous to 1835, there were 14 statutes passed which applied more or less to municipal corporations, commencing with the 3rd of Edward I., c. 6 (the statutes of Westminster, the first). Between the years 1504 (19 Henry 7, c. 7) and 1878 (41 & 42 Vict. c. 26), there were 29 Acts* passed, which, to a greater or lesser extent, had a remote connection with municipal corporations and their functions, making together a grand total of 98 separate enactments, in which were comprised the municipal law† of England and Wales.

The general purport of the above-named laws may be thus briefly summarized :—

(a) To constitute a corporation composed of a mayor, aldermen, and burgesses, acting by a council in which the general body of burgesses were represented by from twelve to sixty-four members thereof. The burgesses, by which term is indicated those individuals enjoying the privilege of voting, consisted of householders within the borough (residents within seven miles of it, and payers of borough and poor rates) ; an occupancy of not less than twelve months being necessary, and non-payment of rates or acceptance of poor relief entailed deprivation of the franchise. The register of voters, or "burgess roll," was prepared annually, and, in boroughs both municipal and parliamentary, settled by a revising barrister ; in boroughs municipal only that duty devolved upon the mayor, aided by two annually-elected assessors. The burgesses elected the councillors by ballot, on the first of November in each year, and the council chose the aldermen biennially (one for every three councillors), and the mayor annually. The qualification for a councillor or alderman was £1,000 property or £30 rating, if the borough was before the year 1869 divided into four or more wards, or £500 property or £15 rating in other cases, and residence within fifteen miles of the borough ; but by a very recent Act (43 Vict. c. 17), this restriction was modified in a very important sense, as any person qualified to be a burgess was thereby qualified to serve as alderman or councillor. The property qualification then applied only to burgesses living beyond seven but within fifteen miles of the borough. In such boroughs as were divided into wards the councillors were apportioned among and separately elected in the several wards. A person might be chosen an alderman although he had not been elected a councillor, but the mayor had to be selected from the aldermen or councillors. By virtue of his appointment the mayor became a justice of the peace for the borough during his tenure of office and one year after. There were certain monetary penalties, limited in amount, for the non-acceptance of office.

(b) To provide for the performance of the following functions (amongst others of a minor character :—

- (1) Administration of justice in local criminal and civil courts.
- (2) Appointment and supervision of police.
- (3) Administration of public property and the levy of rates when such property is not sufficient to meet the public expenses.
- (4) The enactment of bye-laws and appointment and dismissal of public servants.
- (5) Execution of sanitary regulations under the Public Health Acts.
- (6) Paving, lighting, supplying water, cleansing, and maintenance and improvement of thoroughfares and sewerage.
- (7) Establishment and maintenance of public buildings, works, museums, and libraries.
- (8) Making and maintaining harbours, docks, and navigations.
- (9) Administration of special charitable trusts.
- (10) Superintendence and enforcement of educational regulation where there is no school board.

* These Acts did not, however, come sufficiently within the scope of the Consolidation Bill to necessitate their inclusion in the schedules of the present Act (15 & 46 Vict. c. 50).

† An examination of the Consolidation Act will of course show to what extent the law—as it stood when the Act was passed—has been amended by its provisions. The general effect of the law as summarized in paragraph is still preserved, but there are more or less important amendments, such, for instance, as that which now permits the mayor to be chosen from the burgesses at large (Clause 15, subsection 1).

It is to the Prime Minister * of this country that we owe two assertions which may well become historical and be appropriately introduced in these pages. One of them—"Our municipalities produce qualities which are the best safeguards of England's greatness"—is an unassailable declaration which does not admit the shadow of denial even from those who have never enjoyed the high privilege of living under the popular form of local government which is associated with English corporate administration. But the "English citizen" who appreciates the regulated independence which is secured to him by a well-ordered system of necessary control—working without friction between the State and the individual—may be reasonably expected to extend a somewhat reluctant concurrence to the statement from the same eminent authority—that the parliamentary session of 1882 "is, so far as concerns legislation, one of utter ruin and discomfiture." In a general way this sweeping censure is irrefutable, but the session witnessed many welcome additions to the Statute Roll which go far to redeem it from the severe stigma applied in the Premier's language. Several measures passed through the various stages of parliamentary revision and legislative sanction almost unnoticed by the public, but they are none the less much-needed and useful laws. In proposing the adoption of the Municipal Reform Bill of 1835, Lord John Russell remarked: "I have no doubt that when this new constitution of the municipal boroughs comes into effect, we shall find, not only that it will be productive of great improvements, not only that many defects will be remedied and many abuses corrected, but that the working of the Bill itself will point out how the whole system may be perfected." These hopeful anticipations, after the lapse of half a century, may be said to have attained their complete fulfilment. The Municipal Corporations Act of 1882, prepared in pursuance of a recommendation from the Statute Law Committee, first introduced in the House of Lords as a purely Consolidation Bill (with necessary verbal amendments), and which received the Royal Assent on the 18th of August, can fairly claim of itself to give a notable and gratifying character to the senatorial achievements of the session, inasmuch as it provides the inhabitants of England and Wales—after nearly fifty years of legislative experience—with a sound and comprehensible Municipal Code.

* The Right Hon. W. E. Gladstone, M.P.

THE
MUNICIPAL CORPORATIONS (CONSOLIDATION) ACT,
1882.

(45 & 46 VICTORIA, CHAPTER 50.)

AN ACT FOR CONSOLIDATING, WITH AMENDMENTS, ENACTMENTS RELATING
TO MUNICIPAL CORPORATIONS IN ENGLAND AND WALES.

This Act received the Royal Assent on August 18th, 1882.

P R E A M B L E.

WHEREAS divers bodies corporate at sundry times have been *Preamble.*
constituted in the cities, towns, and boroughs of England and
Wales, to the intent that the same might for ever be and
remain well and quietly governed :

And whereas the Act of the session of the fifth and sixth
years of the reign of King William the Fourth, chapter
seventy-six,* “to provide for the regulation of Municipal
Corporations in England and Wales,” applies to most of those
bodies constituted before the passing of that Act, and to every
of those bodies constituted after the passing of that Act; and
that Act having been from time to time much altered and
added to by other Acts, it is expedient that all the Acts aforesaid
be reduced into one Act with some amendments :

[See pages 21 to 24 for the Schedules of Acts thus generally recited].

Be it therefore enacted by the Queen’s most Excellent
Majesty, by and with the advice and consent of the Lords
Spiritual and Temporal, and Commons, in this present
Parliament assembled, and by the authority of the same, as
follows :

* Referred to throughout the comments and notes following as “the Act of 1835.”

PART I.

PRELIMINARY.

Short title. **1.**—This Act may be cited as the Municipal Corporations Act, 1882.

Division of Act into parts [and arrangement of sections]. **2.**—This Act is divided into [Thirteen] Parts*, as follows :

PART I.—PRELIMINARY.

- Section
1. Short title.
 2. Division of Act into parts.
 3. Extent.
 4. Commencement.
 5. Repeals.
 6. Application.
 7. Interpretation and construction.

PART II.—CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Name.

8. Name of municipal corporation.

Burgesses.

9. Qualification of burgess.

Council ; Mayor, Aldermen, and Councillors.

10. Constitution of council.
11. Qualification of councillor.
12. Disqualifications for being councillor.
13. Term of office and rotation of councillors.
14. Number, term of office, and rotation of aldermen.
15. Qualification, term of office, salary, precedence, and powers of mayor.
16. Power of mayor to appoint deputy.

Officers of Council.

17. The town clerk and deputy.
18. The treasurer.
19. Other borough officers.
20. Security by and remuneration of officers.
21. Accountability of officers.

* The arrangement of sections, which in the Act itself forms the Introduction, is inserted here as being the most fitting place for consecutive reference.

*Meetings and Proceedings of Council; Committers.**Division of
Act into parts
[and arrange-
ment of
sections].*

Section

22. Quarterly and other meetings of council; appointment of committees, minutes, &c.

Bye-laws.

23. Power of council to make bye-laws.
24. Evidence of bye-laws.

Accounts and Audit.

25. The borough auditors.
26. Half-yearly accounts of treasurer.
27. Audit and publication of treasurer's accounts.
28. Returns to Local Government Board.

Revising Assessors.

29. Revising assessors in non-parliamentary boroughs.

Division of Borough into Wards, or alteration of Wards.

30. Proceedings for division of borough into wards, or alteration of wards.

Supplemental and Exceptional Provisions.

31. Occupation of part of house.
32. Claim by occupier to be rated.
33. Rules as to qualification of burgess on succession, &c.
34. Obligation to accept office or pay fine.
35. Declaration on acceptance of office.
36. Fine on resignation, &c.
37. Re-eligibility of office holders.
38. Mayor and aldermen to continue members of council.
39. Avoidance of office by bankruptcy or absence.
40. Filling of casual vacancies.
41. Penalty on unqualified person acting in office.
42. Validity of acts done notwithstanding disqualification, &c.
43. Duties of town clerk, deputy, and treasurer during vacancy or incapacity.

PART III.—PREPARATIONS FOR AND PROCEDURE AT ELECTIONS.

Parish Burgess Lists; Burgess Rolls; Ward Rolls.

44. Preparation and revision of parish burgess lists.
45. The burgess roll and ward rolls.
46. Arrangement of lists and rolls.
47. Correction of burgess roll.
48. Printing and sale of burgess roll and other documents.
49. Separate list of persons qualified to be councillors but not to be burgesses.

Election of Councillors.

50. Borough and ward elections.
51. Title to vote.
52. Day of election.
53. Returning officer at election.
54. Notice of election.
55. Nomination of candidates.
56. Relation of nomination to election.
57. Publication of uncontested election.
58. Mode of conducting poll at contested election.
59. Questions which may be put to voters.

Election of Aldermen.

60. Time and mode of election of aldermen.

Election of Mayor.

61. Time and mode of election of mayor.

*Division of
Act into parts
[and arrange-
ment of
sections].*

Section

Election of Auditors and Assessors.

62. Time and mode of election of auditors and assessors.

Supplemental and Exceptional Provisions.

- 63. Right of women to vote.
- 64. Polling districts.
- 65. Notices as to elections.
- 66. Time for filling casual vacancies.
- 67. Illness, &c., of mayor or returning officer.
- 68. Election of councillor in more than one ward.
- 69. Elections not in churches.
- 70. Omission to hold election, or election void.
- 71. Burgess roll to be in operation until revision of new burgess roll.
- 72. Non-compliance with rules.
- 73. Election valid unless questioned within twelve months.
- 74. Offences in relation to nomination papers.
- 75. Offences in relation to lists and elections.
- 76. Revival of former law on expiration of Ballot Act.

PART IV.—CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

- 77. Definitions.
- 78. General penalties for corrupt practices.
- 79. Disqualifications and avoidance of election for corrupt practices by candidates.
- 80. Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part.
- 81. Avoidance of election for general corruption.
- 82. Paid agents and canvassers.
- 83. Payment for conveyance of voters.
- 84. Prosecutions for corrupt practices.
- 85. Striking off votes.
- 86. Personation.

Election Petitions.

- 87. Power to question municipal election by petition.
- 88. Presentation of petition.
- 89. Security for costs.
- 90. Petition at issue.
- 91. Municipal election list.
- 92. Constitution of election court.
- 93. Trial of election petition.
- 94. Witnesses.
- 95. Withdrawal of petition.
- 96. Abatement of petition.
- 97. Withdrawal and substitution of respondents.
- 98. Costs on election petitions.
- 99. Reception of and attendance on the election court.
- 100. Rules of procedure and jurisdiction.
- 101. Expenses of election court.
- 102. Acts done pending a petition not invalidated.
- 103. Provisions as to elections in the room of persons unseated on petition.
- 104. Prohibition of disclosure of vote.

PART V.—CORPORATE PROPERTY AND LIABILITIES.

Corporate Land.

- 105. Power to purchase land for town hall, &c.
- 106. Power to borrow with approval of Treasury.
- 107. Power to acquire land with the approval of the Treasury.

Section

*Division of
Act into parts
[and arrange-
ment of
sections].*

108. Restrictions on alienation of corporate land without approval of Treasury.
109. Power to dispose of land with approval of Treasury.
110. Council may renew leases, &c.

Working Men's Dwellings.

111. Sites for working men's dwellings.

Repayment of Loans.

112. Power for Treasury to impose conditions as to repayment of money borrowed.
113. Provisions as to sinking fund.

Purchase or Compensation Money.

114. Provision for replacing purchase or compensation money paid to treasurer.
115. Investment of proceeds of sale or exchange authorized by Treasury.
116. Power for Treasury to authorize application of certain investments for benefit of borough.

Misappropriation.

117. Penalty for misappropriation of moneys.

Corporate Stock.

118. Transfer of and other dealings with corporate stock.

Borough Bridges.

119. Maintenance of borough bridges.

Loans for Municipal Buildings.

120. Power to borrow for buildings.

Advowsons and similar Rights.

121. Obligations and powers in respect of advowsons, &c.
122. Regulations as to sale of ecclesiastical patronage belonging to municipal corporation.

Special Rates.

123. Power to continue rates for special purposes.

Misapplication of Corporate Property.

124. Prohibition of expenditure of corporate funds on parliamentary elections.

Transitory Provisions.

125. Transfer of investments made before 1860 in names of trustees.
126. Scheme respecting mortgage debts incurred before 1860.
127. Consolidation of debts incurred before 1860.
128. Saving for sales, &c., in pursuance of past contracts and resolutions.
129. Saving for rates in respect of past debts.
130. Saving for rights of creditors in respect of tolls or dues.
131. Saving for lawful debts contracted before 5 & 6 Will. 4, c. 76.
132. Saving against new liability to debts contracted before 5 & 6 Will. 4, c. 76.

PART VI.—CHARITABLE AND OTHER TRUSTS AND POWERS.

Charitable Trusts.

133. Administration of charitable trusts and vesting of legal estate.

*Division of
Act into parts
[and arrange-
ment of
sections].*

Special Trusts and Powers.

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| Section | |
| 134. | Corporation to be trustee where corporators trustees. |
| 135. | Appointment of members of council to be trustees in cases of joint trusts and other cases. |

Local Acts.

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| 136. | Transfer of powers of local authorities to municipal corporations. |
| 137. | Power for council to extend local lighting Act. |
| 138. | Exercise of powers under local Acts. |

PART VII.—BOROUGH FUND; BOROUGH RATE: COUNTY RATE.

Borough Fund.

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| 139. | Payments to borough fund. |
| 140. | Application of borough fund. |
| 141. | Orders for payment of money. |
| 142. | Payments to and by treasurer. |
| 143. | Application of surplus of borough fund. |

Borough Rate.

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| 144. | Power for council to make borough rate and assess contribution thereto. |
| 145. | Collection of borough rate in undivided parish. |
| 146. | Collection of borough rate in divided parish. |
| 147. | Rating of owners instead of occupiers for borough rate in certain cases. |
| 148. | Warrants for levy of borough rate. |
| 149. | Borough rate to go to borough fund; and its application. |

County Rate.

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|------|---|
| 150. | General exemption of quarter sessions boroughs from county rate. |
| 151. | Liability of quarter sessions borough for prosecution expenses of county. |
| 152. | Liability of certain quarter sessions boroughs to other county expenses. |
| 153. | Mode of accounting by borough to county. |

PART VIII.—ADMINISTRATION OF JUSTICE.

County Justices.

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| 154. | Jurisdiction of county justices in borough. |
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Borough Justices.

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| 155. | Mayor and last mayor to be borough justices. |
| 156. | Separate commission of peace. |
| 157. | Qualification of borough justice. |
| 158. | Jurisdiction of borough justices. |
| 159. | Clerk to borough justices. |
| 160. | Justices' room. |

Stipendiary Magistrate.

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| 161. | Appointment of stipendiary magistrate. |
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Borough Quarter Sessions: Recorder: Clerk of the Peace.

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| 162. | Grant of separate court of quarter sessions. |
| 163. | The recorder. |
| 164. | The clerk of the peace. |
| 165. | Recorder to hold court of quarter sessions. |
| 166. | Power to appoint deputy recorder. |
| 167. | Powers of mayor in absence of recorder and deputy recorder. |
| 168. | Power for recorder to form a second court. |
| 169. | Liability of borough having quarter sessions for prosecutors' expenses. |

Sheriff.

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| 170. | Appointment of sheriff in counties of cities and counties of towns. |
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Section	Coroner.	Division of Act into parts [and arrangement of sections].
171.	Appointment, fees, &c. of borough coroner in boroughs having separate quarter sessions.	
172.	Power of borough coroner to appoint a deputy.	
173.	Returns by borough coroners.	
174.	Acting of county coroner in borough.	

Borough Civil Court.

- 175. Judge of borough civil court where there is a recorder.
- 176. Judge of borough civil court where there is no recorder.
- 177. Tenure of judge.
- 178. Registrar and other officers and fees.
- 179. Solicitors.
- 180. Time of holding court.
- 181. Procedure.
- 182. Power for judge to make rules of procedure.
- 183. Jurisdiction of court.
- 184. Saving for borough civil courts and for 35 & 36 Vict. c. 86.
- 185. Power to extend jurisdiction of borough civil court.

Borough Juries.

- 186. Provisions as to juries in boroughs.

Exceptional Provisions.

- 187. Grants to boroughs not affected by subsequent grants to counties.
- 188. Trial of offences committed in counties of cities and counties of towns.
- 189. Jurisdiction in places separated from borough.

PART IX.—POLICE.

Watch Committee; Constables.

- 190. Council to appoint watch committee.
- 191. Appointment, duties and powers of borough constables.
- 192. Quarterly returns as to borough constables.
- 193. Power for constables to apprehend disorderly persons, &c.
- 194. Penalties on constables for neglect of duty.
- 195. Penalty for assaults on constables.

Special Constables.

- 196. Appointment of special constables.

Watch Rate.

- 197. Levy of watch rate.
- 198. Watch rate in divided parish.
- 199. Warrant for levy of watch rate.
- 200. Watch rate to go to borough fund.

PART X.—FREEMEN.

- 201. Definition of freeman.
- 202. Freedom not by gift or purchase.
- 203. The freemen's roll.
- 204. Admission to freedom.
- 205. Reservation of rights of property to freemen and others.
- 206. Limit of value and saving as to conditions precedent.
- 207. Saving for power to question right.
- 208. Reservation of beneficial exemptions to freemen and others.
- 209. Reservation of parliamentary franchise, &c.

*Division of
Act into parts
[and arrange-
ment of
sections].*

Section

PART XI.—GRANT OF CHARTERS.

- 210. Power to Crown in granting charter to borough to extend to it the provisions of the Municipal Corporations Acts.
- 211. Reference to Committee of Council, and notice of petition for charter.
- 212. Power by charter to settle wards, and by fixing dates and otherwise to adapt the Municipal Corporations Acts to first constitution of new borough.
- 213. Scheme for continuance or abolition of and adjustment of rights of existing local authority and officers.
- 214. Supplemental provisions as to scheme and charter.
- 215. Provision as to police force in new borough.
- 216. Validity of charters.
- 217. Power to settle scheme in case of recent charters.
- 218. Power to amend scheme.

PART XII.—LEGAL PROCEEDINGS.

- 219. Prosecution of offences and recovery of fines.
- 220. Exclusion of certiorari.
- 221. Application of penalties in quarter sessions boroughs.
- 222. Duties of clerk of peace as to fines and forfeitures.
- 223. Service of summons or warrant.
- 224. Procedure in penal actions against corporate officers.
- 225. Quo warranto and mandamus.
- 226. Provisions for protection of persons acting under Act.
- 227. Power for borough constables to take bail.

PART XIII.—GENERAL.

Boundaries.

- 228. Boundaries of boroughs and transfer of parts to counties.
- 229. Adjustment between boroughs and counties on change of boundaries.

Time.

- 230. Computation of time.

Distance.

- 231. Measurement of distances.

Notices.

- 232. Notices on town hall.

Inspection and Copies.

- 233. Inspection of documents.

Fees.

- 234. Tables of fees to be posted.

Seals and Signatures.

- 235. Forgery.

Applications to Treasury.

- 236. Notice of application to and correspondence with Treasury.

Deputy.

- 237. Acts of deputy not to be invalidated by defect in appointment.

Overseers.

- 238. Notices to and acting of overseers.

Section	<i>Declarations and Oaths.</i>	<i>Division of Act into parts [and arrangement of sections].</i>
239.	Power to administer oaths, &c.	
	<i>Forms.</i>	
240.	Forms in schedule.	
	<i>Misnomer or Inaccurate Description.</i>	
241.	Misnomer or inaccurate description not to hinder.	
	<i>Substitution in former Acts.</i>	
242.	Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, &c.	
243.	Short titles of Acts partly repealed.	
	<i>Returning Officers at Parliamentary Elections.</i>	
244.	Mayors of certain boroughs to be returning officer in parliamentary elections.	
	<i>Disfranchised Parliamentary Boroughs.</i>	
245.	Electors in disfranchised boroughs.	
	<i>Licensing.</i>	
246.	Explanation of terms "town corporate," &c., in Licensing Act.	
	<i>Freedom of Trading.</i>	
247.	Right of free trading in boroughs.	
	<i>Cinque Ports.</i>	
248.	Special provisions as to certain of the Cinque Ports.	
	<i>Cambridge.</i>	
249.	Vice-Chancellor of Cambridge.	
	<i>Savings.</i>	
250.	Saving for existing corporations.	
251.	Saving for local Acts.	
252.	Saving for Prison Acts.	
253.	Saving for military and naval officers, &c.	
254.	Saving for dockyards, barracks, &c.	
255.	Saving as to Admiralty.	
256.	Saving for Lord Warden.	
257.	Saving for universities.	
258.	Saving for jurisdiction over cathedral precincts.	
259.	Saving for royal prerogative.	
260.	Saving as to repealed enactments].	

3.—This Act shall not extend to Scotland or Ireland.

Extent.

4.—This Act shall commence and have effect from and immediately after the thirty-first of December one thousand eight hundred and eighty-two.

Commencement.

5.—The enactments described in the First Schedule* are hereby repealed, subject to the exceptions and qualifications in this Act mentioned.

Repeals.

[Part I. of the First Schedule recites the Enactments repealed generally. They are 43 in number, as follows :—

* Subsection 4 of Clause 7 (see page 26) provides that "The schedules shall be read and have effect as if they were part of this Act."

Repeals.

5 & 6 Will. 4, c. 76.	The Municipal Corporations Act, 1835.
6 & 7 Will. 4, c. 77, in part.	An Act for carrying into effect the reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues and patronage ; in part, namely,— section twenty-six.
6 & 7 Will. 4, c. 103, in part.	The Municipal Corporation (Boundaries) Act, 1836 ; except section six (Berwick).
6 & 7 Will. 4, c. 104.	The Municipal Corporation (Borough Fund) Act, 1836.
6 & 7 Will. 4, c. 105.	The Municipal Corporation (Justices, &c.) Act, 1836.
7 Will. 4 & 1 Vict. c. 78.	The Municipal Corporation (General) Act, 1837.
7 Will. 4 & 1 Vict. c. 81.	The Municipal Corporation (Watch Rate) Act, 1837.
1 & 2 Vict. c. 31.	The Municipal Corporation (Benefices) Act, 1838.
1 & 2 Vict. c. 35.	An Act to repeal the stamp duty now paid on admission to the freedom of corporations in England.
2 & 3 Vict. c. 27.	The Municipal Corporation (Borough Courts) Act, 1839.
2 & 3 Vict. c. 28.	The Municipal Corporation (Watch Rate) Act, 1839.
3 & 4 Vict. c. 28.	The Municipal Corporation (Watch Rate) Act, 1840.
4 & 5 Vict. c. 48.	An Act to render certain municipal corporations rateable to the relief of the poor in certain cases.
6 & 7 Vict. c. 89.	The Municipal Corporation Act, 1843.
8 & 9 Vict. c. 110.	The Municipal Corporation (Rates) Act, 1845.
11 & 12 Vict. c. 93.	An Act to confirm the incorporation of certain boroughs.
12 & 13 Vict. c. 65.	An Act to provide a more convenient mode of levying and collecting county rates, county police rates, and district police rates, in parishes situated partly within and partly without the limits of boroughs which are not liable to such rates.
12 & 13 Vict. c. 82, in part.	An Act to relieve boroughs in certain cases from contribution to certain descriptions of county expenditure ; in part, namely,— section one.
13 & 14 Vict. c. 42.	The Municipal Corporation (Incorporation) Act, 1850.
13 & 14 Vict. c. 64.	The Municipal Corporation (Bridges) Act, 1850.
13 & 14 Vict. c. 91, in part.	The Municipal Corporation (Justices) Act, 1850 ; in part, namely,— section nine.
13 & 14 Vict. c. 101, in part.	An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty, for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund ; and to make certain amendments in the laws for the relief of the poor ; in part, namely,— section ten.
15 & 16 Vict. c. 81, in part.	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales ; in part, namely,— section thirty-eight.
16 & 17 Vict. c. 79.	The Municipal Corporation Act, 1853.
16 & 17 Vict. c. 137.	The Charitable Trusts Act, 1853 ; in part, namely,— section sixty-five.
20 & 21 Vict. c. 50.	The Municipal Corporation Act, 1857.
21 & 22 Vict. c. 43.	An Act to amend the municipal franchise in certain cases.
22 Vict. c. 35.	The Municipal Corporation Act, 1859.
22 & 23 Vict. c. 32, in part.	An Act to amend the law concerning the police in counties and boroughs in England and Wales ; in part, namely,— sections five and six.

24 & 25 Vict. c. 75.	The Municipal Corporations Acts Amendment Act, 1861. <i>Repeals.</i>
31 & 32 Vict. c. 41.	The Borough Electors Act, 1868.
32 & 33 Vict. c. 23.	The Municipal Corporation (Recorders) Act, 1869.
32 & 33 Vict. c. 55.	The Municipal Corporation (Election) Act, 1869.
32 & 33 Vict. c. 62, in part.	The Debtors Act, 1869; in part, namely,— section twenty-one.
34 & 35 Vict. c. 67.	The Municipal Corporations Act, 1859, Amendment Act.
35 & 36 Vict. c. 33, in part.	The Ballot Act, 1872; in part, namely,— sections twenty and twenty-one.
35 & 36 Vict. c. 60.	The Corrupt Practices (Municipal Elections) Act, 1872.
36 & 37 Vict. c. 33.	The Municipal Corporations Evidence Act, 1873.
37 & 38 Vict. c. 59.	The Working Men's Dwellings Act, 1874.
38 & 39 Vict. c. 40.	The Municipal Elections Act, 1875.
39 & 40 Vict. c. 61, in part.	The Divided Parishes and Poor Law Amendment Act, 1876; in part, namely,— section thirty.
40 & 41 Vict. c. 69.	The Municipal Corporations (New Charters) Act, 1877.
41 & 42 Vict. c. 26, in part.	The Parliamentary and Municipal Registration Act, 1878; in part, namely,— sections twenty, thirty-four, and forty-one.

Part II. of the First Schedule recites the enactments repealed *only as to boroughs within this Act*.* They are 26 in number, as follows:—

3 Edw. 1, c. 6, in part.	The Statutes of Westminster, the first. Amerciaments shall be reasonable; in part, namely,— as far as it relates to a city, borough, or town.
3 Edw. 1, c. 31, in part.	The Statutes of Westminster, the first. Excessive toll in market town. Murage; in part, namely,— from "Touching citizens" to "the King" inclusive.
15 Rich. 2, c. 5, in part.	St. 7 Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain, where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands to gilds, fraternities, offices, commonalties; or to their use; in part, namely,— as far as it relates to mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty.
2 & 3 Phil. & Mary, c. 18.	An Act touching commissions of the peace and gaol delivery in towns corporate not being counties in themselves.
7 Jas. 1, c. 5, in part.	An Acte for ease in pleading against troublesome and contentious suites presented against justices of the peace, maiors, constables, and certaine other His Majesties officers for the lawfull execution of their office; in part, namely,— as far as it relates to mayors of cities or towns corporate.
21 Jas. 1, c. 12, in part.	An Acte for ease in pleading against troublesome and contentious suites; in part, namely,— section three, as far as it relates to mayors of cities or towns corporate.
11 Geo. 1, c. 4.	An Act for preventing the inconvenience arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made.

* The boroughs *without this Act*, and to which the enactments would still apply, are those set out in the Appendix.

<i>Repeals.</i>	12 Geo. 3, c. 21.	An Act for giving relief in proceedings upon writs of mandamus for the admission of freemen into corporations and for other purposes therein mentioned.
	32 Geo. 3, c. 58.	An Act for the amendment of the law in proceedings upon information in nature of quo warranto.
	55 Geo. 3, c. 51.	An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates.
	57 Geo. 3, c. 91.	An Act to enable justices of the peace to settle the fees to be taken by clerks of the peace of the respective counties and other divisions of England and Wales.
	2 & 3 Will. 4, c. 69.	An Act to prevent the application of corporate property to the purposes of election of members to serve in Parliament.
	3 & 4 Will. 4, c. 31.	An Act to enable the election of officers of corporations and other public companies now required to be held on the Lord's Day to be held on the Saturday next preceeding or on the Monday next ensuing.
	4 & 5 Will. 4, c. 27.	An Act for the better administration of justice in certain boroughs and franchises.
	7 Will. 4 & 1 Vict. c. 19.	An Act to empower the recorder or other person presiding at quarter sessions in corporate cities and towns, and justices of the peace for counties, ridings, or divisions, to divide their respective courts in certain cases.
	5 & 6 Vict. c. 104.	The Municipal Corporation Act, 1842.
	15 & 16 Vict. c. 5.	The Municipal Corporation Act, 1852.
	23 & 24 Vict. c. 16.	The Municipal Corporation (Mortgages, &c.) Act, 1860.
	23 & 24 Vict. c. 51, in part.	The Local Taxation Returns Act, 1860; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
	23 & 24 Vict. c. 106, in part.	The Lands Clauses Consolidation Acts Amendment Act, 1860; in part, namely,— section six.
	38 & 39 Vict. c. 89, in part.	The Public Works Loans Act, 1875; in part, namely,— in section forty, the second paragraph (beginning "The council" and ending "this Act"), and the words "and the council respectively" in the last paragraph.
	39 & 40 Vict. c. 20, in part.	The Statute Law Revision Act (Substituted Enactments) Act, 1876; in part, namely,— section three.
	40 & 41 Vict. c. 17.	An Act to amend the law relating to the division of courts of quarter sessions in boroughs.
	40 & 41 Vict. c. 66, in part.	The Local Taxation Returns Act, 1877; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
	42 & 43 Vict. c. 30, in part.	The Sale of Food and Drugs Act Amendment Act, 1879; in part, namely,— section eight.
	43 Vict. c. 17.	The Town Councils and Local Boards Act, 1880.

Application.

6.—This Act shall apply to every * city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the com-

* A List of the Boroughs to which the Municipal Corporations Act of 1835 applied at the time of its passing, and those subsequently incorporated under its provisions, will be found in the Appendix.

mencement of this Act, and whereto the provisions of the Municipal Corporation Acts are under this Act extended by charter, but to no other place.

7.—(1.) In this Act—

“Borough” means, unless a contrary intention appears, a city or town to which this Act applies ;

Interpretation
and construction.

[The effect of this paragraph would not, however, seem to invalidate the use of the style “borough” by any city or town (*to which this Act does not apply*) where a prescriptive or chartered right to the user has been established].

“Municipal corporation” means the body corporate constituted by the incorporation of the inhabitants of a borough :

“Municipal Corporations Act, 1835,” means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September one thousand eight hundred and thirty-five :

“Municipal Corporations Acts” means this Act and any Act to be passed amending this Act :

“Burgess” includes citizen :

“Corporate seal” means the common seal of a municipal corporation :

“Corporate office” means the office of mayor, alderman, councillor, elective auditor, or revising assessor :

“Corporate land” means land belonging to or held in trust for a municipal corporation :

“Municipal election” means an election to a corporate office :

“Parliamentary borough” means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large :

“Parliamentary election” means an election of a member to serve in Parliament :

“Parish” means any place for which a separate poor rate is or can be made :

“Overseers” means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers :

“County” does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county :

Interpretation and Construction. "Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated :

"Person" includes a body of persons corporate or unincorporate :

"Treasury" means the Commissioners of Her Majesty's Treasury :

"The Secretary of State" means one of Her Majesty's Principal Secretaries of State :

"High Court" means Her Majesty's High Court of Justice :

"Justice" means one of Her Majesty's justices of the peace :

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court :

"Bank of England" means the Governor and Company of the Bank of England :

"Schedule" means schedule to this Act, and "Part" means part of this Act :

"Writing" includes print, and "written" includes printed.

(2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

[The effect of section 142 of the Act of 1835, section 14 of 16 & 17 Vict. c. 79, and section 4 of 41 & 42 Vict. c. 26, is preserved in this clause].

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

*Corporate Name.**Corporate
Name.*

8.—The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city,* the mayor, aldermen, and citizens of the city.

Name of
municipal
corporation.

[This clause preserves the effect of section 6 of the Act of 1835 and clears away certain doubts which had arisen under that Act with respect to the proper style and name of a municipal corporation governed under its provisions. Section 6 provided:—"That after the first election of councillors under this Act in any borough, the body or reputed body corporate named in the said schedule in connection with such borough shall take and bear the names of the mayor, aldermen, and burgesses of such borough, and by that name shall have perpetual succession, and shall be capable by the council hereinafter mentioned (the town council) to do and suffer all acts which now lawfully they and their successors respectively may do and suffer by any name or title of incorporation." As to the effects of misnomer of corporations, see *Mayor and Burgesses of Lyme Regis* (10 Rep. 120, 123), *Mayor of Stafford v. Bolton* (1 B. & P. 40). The absence of the express proviso now included in clause 8 of the present Act was deemed in many quarters to bar the use of the word "citizens" in all legal documents or instruments. In 1878 the town clerk of Exeter (B. C. Gidley, M.A.) suggested the subject for discussion (and determination by the Exeter City Council) in an interesting pamphlet which quoted judicial opinions in favour of the term "citizens," and not "burgesses," being employed in the corporate style of cities. It is difficult to comprehend how any very serious misgiving could have arisen under the Act of 1835 when careful consideration was given to the 6th, 137th and 142nd clauses of that statute. The last-named clause defined clearly that "Burgess shall be construed to mean citizen in the case of a city." The present clause, however, wisely leaves no room for doubt].

*Burgesses.**Burgesses.*

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.

Qualification of
burgess.

[See sections 201-209 as to the rights of freemen to enjoy the privileges of burgesses].

* The cities to which the distinctive style contained in the latter part of this clause apply are given in the Appendix.

Burgesses.

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows :

- (a.) Is of full age ; and
 - (b.) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months* in occupation, joint or several, of any house, warehouse, counting-house,† shop, or other building (in this Act referred to as qualifying property) in the borough ; and
 - (c.) Has during the whole of those twelve months resided‡ in the borough, or within seven miles thereof ; and
 - (d.) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate ; and
 - (e.) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January.
- (3.) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—
- (a.) Is an alien ; or
 - (b.) Has within the twelve months aforesaid received union or parochial relief or other alms ; or
 - (c.) Is disentitled under any Act of Parliament.

[The effect of section 13 of the Act of 1835, section 1 of 32 & 33 Vict. c. 55 (1869), section 4 of 35 & 36 Vict. c. 60 (1872), and section 7 of 41 & 42 Vict. c. 26 (1878) is preserved in this clause. It will be observed that under subsection 2, paragraphs *b* and *c*, a burgess must be an inhabitant as well as an occupying householder. The residence must be actual and *bonâ fide* ; mere colourable residence within the borough or within seven miles will not make a person an inhabitant so as to entitle him to be on the burgess roll. By 32 & 34 Vict. c. 55, s. 1 provides “that the respective distances mentioned in that Act should be measured in the manner directed by section seventy-six of the Act of the session of the sixth and seventh years of Queen Victoria chapter eighteen.” The words of that section are, “That the said distance shall be understood to be the distance of seven miles as measured in a straight line, on the horizontal plane, from the point within a city or borough, or place sharing in the election therewith, from which such distance is to be measured, according to the directions in that behalf in the said Act : Provided always, that in cases where there is now or shall hereafter be a map of any city or borough and of the country surrounding the same, drawn or published under the authority and direction of the principal

* Section 9 of the Act of 1835 fixed three years for the term of residence which was shortened to one year by section 1 of 32 & 33 Vict. c. 55 (1869).

† An attorney's office, if occupied, comes within the meaning of “counting-house.” See *re Creek* (32 L.T., Q. B., 89).

‡ See *Reg. v. Mayor of Exeter*.—(Wescomb's case, L. R., 4 Q. B., 110) ; per Blackburn J., as to what is, “in common sense,” a residence.

officers of Her Majesty's Ordnance, such distance may be measured and determined by the said map." This principle was acted on in cases of measurement under Metropolitan Police Acts as to cabs (16 & 17 Vict. c. 127, s. 13); Bankers' Cheques (17 & 18 Vict. c. 83, s. 7), see *Reg. v. Inhabitants of Saffron Walden* (92 B., 76), *Lake v. Butler* (5 E. & B., 350). No point is fixed as to or from which the distance is to be measured. A burgess is not, however, the less a householder or the less an occupier of a house because he lets a portion of his house to lodgers. The retention of any part of the house as his own dwelling gives him the legal occupation of the whole; the occupation of the lodger being considered in law that of the landlord, who is the party entitled to be rated. Paragraph *b* of the clause has been also settled in respect to the words "joint and several" with reference to the case of *Reg. v. The Mayor of Exeter* (Dipstale's case, L. R., 4 Q. B., 114). The rule called upon the mayor to show cause why a mandamus should not issue, commanding him to admit one Dipstale into the place and office of one of the burgesses of the city. Dipstale occupied a house in Exeter jointly with his partner, and carried on his business there. He had the exclusive use of a furnished bed-room and sitting-room. He resided more than seven miles from Exeter, but visited the city every day except Sundays to attend to his business, which he always transacted at the house, and sometimes took his meals there. His affidavit stated that he "sometimes" slept there:—*Held* (by JJ. Blackburn and Hannen) that a joint occupation was a sufficient occupation under sec. 9 of the Municipal Corporation Act, to entitle a man to be placed on the list of burgesses, but the Court held that Dipstale had not inhabited the house so as to constitute him an inhabitant householder under the section. Subsection 2, paragraphs *d* and *e*: "Shop" and the antecedent terms are by 41 & 42 Vict. c. 26, s. 5, made to include part of a house, if such part is separately occupied, for the purpose of any trade, business or profession. The same "shop" may be now jointly occupied. It is important that a right description of the qualification be inserted on the burgess roll, as otherwise the name may be removed. *Reg. v. Mayor of Chipping Wycombe* (44 L. J., Q. B., 82). With regard to rating, it is now settled that, in order to constitute a good rating, the name of the party intended to be charged must appear on the rate. *Moss* (appellant) *v. Overseers of Lichfield* (respondents) (7 Man. & G., 72). The payment of rates to entitle a person to be put upon the burgess list of a borough must be a payment by his own act. Payment by another person acting as a volunteer and without any authority from the person liable is not sufficient. *Reg. v. Mayor and Corporation of Bridgnorth* (10 A. & E., 66). But a payment by a landlord in consequence of an arrangement between him and his tenant, who was to pay an additional rent in respect thereof, is considered a sufficient payment by the tenant. *Moger v. Escott* (L. R., 7 C. P., 158). The non-payment of an illegal rate does not disqualify the ratepayer, although he has not appealed against it. *Reg. v. Mayor of New Windsor* (7 Q. B., 908). Occupiers of any house, warehouse, counting-house, or shop in any borough may claim to be rated to the relief of the poor in respect of such premises, whether the landlord is or is not liable to be rated in respect thereof; and upon such occupier so claiming and actually paying or tendering the full amount of the last made rate then payable in respect of such premises, the overseer of the parish in which such premises are situate are required to put the name of the occupier upon the rate for the time being. Relief of any kind (subsection 3, paragraph *b*)—including medical relief given by the poor-law authorities to a man, or any member of his family whom by law he is bound to maintain—will disqualify him for admission to the burgess roll; Relief to a man's father not within section. *Reg. v. Ireland* (L. R., 3 Q. B., 130). Medical or surgical assistance received from the charitable trustees of any borough, or instruction in the endowed schools is not a cause of disqualification for burgessship; section 10 of the Act of 1835 expressly defined this exemption, and paragraphs *a* and *b*, subsection 4, clause 33 of this Act, renew it. "Other alms" mean parochial alms, within the ruling of *Reg. v. Mayor of Lichfield* (2 Q. B., 693)].

Council;
Mayor,
Aldermen and
Councillors.
Constitution of
council.

Council; Mayor, Aldermen, and Councillors.

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council

Council; shall exercise all powers vested in the corporation by this Act
Mayor, or otherwise.
Aldermen, and
Councillors.

(2.) The council shall consist of the mayor, aldermen, and councillors.

[The effect of sections 6 and 25 of the Act of 1835 is preserved in this clause].

Qualification of
councillor.

11.—(1.) The councillors shall be fit persons elected by the burgesses.

(2.) A person shall not be qualified to be elected or to be a councillor, unless he—

(a.) Is enrolled and entitled to be enrolled as a burgess; or

(b.) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made; and

(c.) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

[The effect of sections 25 and 28 of the Act of 1835, section 3 of 32 & 33 Vict. c. 55 (1869), and 43 Vict. c. 17 (1880), is preserved in this clause. Subsection 2, paragraph a, has been settled with reference to the case of *Middleton and others v. Simpson* (L.R., 5 C.P.D., 183), which was a petition against the return of the respondent as town councillor for a ward in Liverpool. The election commissioner reserved, for the opinion of the higher court, the question of law whether the burgess list and roll were conclusive. Coleridge L.C.J. and J.J. Grove and Lindley held that to be eligible for the office of town councillor a candidate must be "entitled to be on" the burgess roll, and that the fact of his name being on the roll is not conclusive evidence that he is "entitled to be

on." It does not, therefore, follow that because an individual procures his enrolment as a burgess he is thereby secured in the privileges of the position, should his enrolment have taken place in ignorance, or otherwise, of his disqualification to be on the roll. See also section 73, and paragraph c, subsection 1, clause 87, of this Act. *Ex parte Birbeck* (L. R., 9 Q. B., 256).—It was held that under the old law, not repealed by 38 & 39 Vict. c. 40, it was the existence of the right to be on the burgess roll and not the fact of being on it, which was to be considered in regard to the right of town councillors. *Ex parte Hindmarch*, (L. R., 3 Q. B., p. 12).—Motion for a *quo warranto* against a town councillor on the roll was made on the ground that he was not duly qualified: per Cockburn C.J. "Proceedings not taken in due time and therefore held to be entitled to be on the list."] Council;
Mayor,
Aldermen, and
Councillors.

12.—(1.) A person shall be disqualified for being elected Disqualifica-
tions for being
councillor.
and for being a councillor, if and while he—

(a.) Is an elective auditor or a revising assessor, or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council; or

[The distinction shown to exist in the case of *Ex parte Molesworth* (L. R., 7 Q. B., 209), whereon a motion was made for an information calling upon James Adams to show by what right he exercised the office of councillor of the city of Chichester is here done away with. J.J. Lush and Hannen held in the case cited that ward assessors appointed under 7 Will. 4 & 1 Vict. c. 78, s. 4, were not disqualified from serving as councillors, but that the objection held good against borough assessors elected under the Act of 1835, section 37. The learned judges were, however, of opinion that considerable doubt did exist, and by this Act the ward assessorships are abolished].

(b.) Is in holy orders, or the regular minister of a dissenting congregation; or

[On a motion for a *quo warranto* information against a town councillor of a borough, on the ground that he was disqualified at the election in November, 1868, by 5 & 6 Will. 4, c. 76, s. 28, as being "the regular minister of a dissenting congregation," it appeared that the defendant carried on business in the borough, and was a deacon of the Baptist Church there, and he had been invited in September, 1867, by the members of an Independent Chapel, in a village about ten miles from the borough, to be their minister, which invitation he refused; but he subsequently agreed to preach for them every Sunday, from the 25th of March to the 24th of June, 1868, and at the end of this time further agreed to continue to preach till the end of the year 1868: Held that the defendant was not "the regular minister of a dissenting congregation, within s. 28, and was therefore not disqualified as town councillor:" per Blackburn, "regular minister in an analogous position to a beneficed clergyman." *Reg. v. Oldham* (L. R., Q. B., vol. 4, p. 290). A clergyman may relinquish his clerical office under 33 & 34 Vict. c. 91].

(c.) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council:

[The disqualification under this section which is similar to that in section 28, 5 & 6 Will. 4, c. 76, applies only during the continuance of the contract, so that by becoming interested in such a contract an alderman or councillor does not cease to be qualified, or become disqualified within the meaning of section 53 of Act cited, so as to incur penalties for acting after the termination of the contract, *Lewis v. Carr* (L. J., 1 Ex. D., 484). Words "contract" or "employment" will receive the widest interpretation. Contract need not be under seal, *Reg. v. Francis* (18 Q. B., 526; S. E. L. T., Q. B., 304). A lease by corporation to a stranger in trust for councillor, held within meaning, *Simpson v. Ready* (12 M. & W., 736). But such is provided for in the subsection following.]

*Council ;
Mayor,
Aldermen, and
Councillors.*

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

- (a.) Any lease, sale, or purchase of land, or any agreement for the same ; or
- (b.) Any agreement for the loan of money, or any security for the payment of money only ; or
- (c.) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted ; or
- (d.) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough ; or
- (e.) Any railway company, or any company incorporated by Act of Parliament or Royal charter, or under the Companies Act, 1862.*

X [The effect of section 28 of the Act of 1835, section 15 of 7 Will. 4 and 1 Vict. c. 78 (1837), sections 1, 7 and 8 of 5 & 6 Vict. c. 104 (1842), sections 1 and 6 of 15 & 16 Vict. c. 5 (1852), and section 5 of 32 & 33 Vict. c. 55 (1869), is preserved in this clause.]

Term of office
and rotation of
councillors.

13.—(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

[The effect of sections 30, 31 and 43 of the Act of 1835 is preserved in this clause].

Number, term
of office, and
rotation of
aldermen.

14.—(1.) The aldermen shall be fit persons elected by the council.

[The use here of the word "fit" implies that the office is to be regarded as one of honour and dignity].

(2.) The number of aldermen shall be one third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

* The 25 & 26 Vict. c. 89.

(5.) The term of office of an alderman shall be six years.

Council ;

Mayor,

Aldermen and
Councillors.

(6.) On the ordinary day of election of aldermen in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

[The effect of sections 25 and 27 of the Act of 1835 is preserved in this clause].

15.—(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such.

Qualification,
term of office,
salary, preced-
ence, and
powers of
mayor.

[This subsection effects a very important amendment of the Act of 1835. By section 49 of that statute the mayor was to be elected *from the aldermen or councillors*. No person could, therefore, fill the chief magistracy without preliminary election by the burgesses as a councillor, or appointment by the council as alderman. At the same time this restriction did not prevent the possibility of a curious and to some extent inconsistent circumstance happening every third year if the council so pleased. By section 49 of the Act of 1835 the first business to be transacted at the quarterly meeting falling on the 9th of November in each year was specifically confined to the election of a mayor. An outgoing alderman could be elected without his subsequent re-election as alderman being required or involved. The ordinary and legal number of the council would apparently be thus increased by one, but, in an appointment under such circumstances, it would become difficult to determine how far the mayor was a member of the council or was not. An incident of this character marked the mayoralty election of St. Ives, in Cornwall, on the 9th November, 1880.* The newly-elected mayor was one of the retiring aldermen. He was not re-elected as alderman, and the town clerk on being appealed to advised that the mayoralty should be retained, but that no vote could or should be given except a casting vote as mayor in the event of an equal division of the council, he (the mayor) not being a member of the council, but only an officer, with certain powers under the law. There is no doubt of the soundness of the town clerk's advice ; but it is as well that this subsection, and the following one, which may be regarded as a necessary corollary, have met the point alluded to in addition to giving the council a wider field for the choice of a "*fit*" person for the honourable position of chief magistrate. Any properly qualified burgess can now be elected as mayor to the exclusion of members of the council].

(2.) An outgoing alderman is eligible.

[The note to the preceding subsection should be read with this].

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

[This subsection ensures the perpetuity of the mayoralty except in the event of death].

(4.) He may receive such remuneration as the council think reasonable.

* See the "Municipal Corporations Companion and Year-Book of Statistics" (J. R. Somers Vine) for 1881, p. 402: Waterlow & Sons Limited, London Wall.

*Council ;
Mayor,
Aldermen and
Councillors.*

[It may be observed here that it is a custom which has been generally adopted for a council desiring to spend a sum of money upon objects which are outside the application thereto of the money of the ratepayers, to attain the end desired by voting the amount needed as a temporary increase of salary to the mayor].

(5.) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough.

[The proviso in this subsection applies in cases where a borough has not a separate commission of the peace, and is comprised in a county petty sessional division. The mayor may claim to be in the chair when the business to be transacted arises in his own borough, but not otherwise].

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

[The effect of sections 6, 25, 49, 57, and 58 of the Act of 1835, and section 4 of 6 & 7 Will. 4, c. 105 (1836), is preserved by this clause (15), so far as election of mayor by the council. The area of selection is extended to those qualified to be aldermen or councillors, election to the latter no longer being a condition precedent of eligibility for former. Subsection 6 is simply a saving of ancient rights].

*Power of mayor
to appoint
deputy.*

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice or in any judicial capacity.

[The effect of sections 7 and 8 of 16 & 17 Vict. c. 79 (1853), is preserved in this clause. The deputy may do all that the mayor could do in his official capacity, except as restricted by subsection 3].

*Officers of
Council.*

Officers of Council.

*The town clerk
and deputy.*

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough.

(2.) The town clerk shall hold office during the pleasure of the council.

[A resolution of the council rescinding the appointment is sufficient.— *Officers of Council.*
Reg. v. Thomas (8, A. & E. 183)].

(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure.

(6.) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk.

[The effect of sections 58 & 65 of the Act of 1835 is preserved in this clause].

18.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough. *The treasurer.*

(2.) The treasurer shall hold office during the pleasure of the council.

[By section 58 of the Act of 1835 the treasurer was elected annually. The Act 6 & 7 Vict. c. 89 (1843) directed the office to be held at pleasure].

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4.) The offices of town clerk and treasurer shall not be held by the same person.

[The effect of section 58 of the Act of 1835 and section 6 of 6 & 7 Vict. c. 89 (1843) is preserved in this clause].

19.—The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed. *Other borough officers.*

[The effect of section 58 of the Act of 1835 is preserved in this clause. It follows herein that compensation could not be claimed for loss of office if even the office vacated be not actually abolished by the council. It would be enough for the council to determine that, in their opinion, it is not necessary to re-appoint any particular officer].

20.—The council shall require every officer appointed by them to give such security as they think proper for the due execution *Security by and remuneration of officers.*

*Officers of
Council.*

of his office, and shall allow him such remuneration as they think reasonable.

[The effect of section 58 of the Act of 1835 is preserved in this clause. The town clerk is to be paid by salary, out of the borough fund; but, whether he has or has not a fixed salary, he cannot make any claim against the corporation for payment in respect of the duties imposed upon him by this Act, or by the Reform Act. *Jones v. Mayor of Carmarthen* (8 M. & W., 605). His salary is considered a compensation for all loss of time, &c. But he is entitled to be repaid money actually disbursed for the preparation of ward lists, &c. *Reg. v. Governor of Poor in Hall* (2 E. & B. 182). From the principles laid down it follows that he has no claim for charges in respect of revision of Burgess lists, ward lists, election of councillors, assessors, or auditors, returns to Secretary of State, bye-laws, copying, &c. However, the town council may resolve to pay him, besides his salary, the usual charges for defending and bringing actions, &c. See *Thomas v. Mayor and Corporation of Swansea* (2 Dowl., N. S., 470); *Stevenson v. Mayor and Corporation of Berwick* (1 Q. B., 154). See also *Reg. v. Priest* (16 Q. B., 32)].

*Accountability
of officers.*

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connection with his office, shewing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(a.) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

["Wilfully means "intentionally." See *Taylor v. Fergette* (L. J., N. S., Ex. 401). For interpretation of "wilful," see 17 & 18 Vict. c. 102, s. 14].

(b.) After three days' notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council or as they direct;

a court of summary jurisdiction* having jurisdiction where the

* As to the Court of Summary Jurisdiction see 42 & 43 Vict. c. 49, s. 20, sub-section 10.

officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction. *Officers of Council.*

[By this subsection, if even the officers be living within the borough, and the borough have a commission of the peace of its own, county magistrates may determine complaints against corporate officers by virtue of their jurisdiction under subsection 1 of section 154 of this Act. See also *Baylis v. Strickland* (1 M. & G. 591)].

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

[The effect of section 60 of the Act of 1835 is preserved in this clause. See *Mayor and Corporation of Lichfield v. Simpson* (8 Q.B., 65)].

Meetings and Proceedings of Council; Committees.

22.—(1.) The rules in the Second Schedule shall be observed.

Meetings and Proceedings of Council; Committees. Quarterly and other meetings of council; appointment of committees, minutes, &c.

The Schedule is as follows:—

(1) The council shall hold four quarterly meetings in every year for the transaction of general business.

2. The quarterly* meetings shall be held at noon on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

3. The mayor may at any time call a meeting of the council.

[It is not necessary that the notice of such meeting contain a statement of the business to be transacted].

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall. Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left or delivered by post in a registered† letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

* At an adjourned quarterly meeting notice must be given of any business which was not actually begun at the quarterly meeting; but of business actually commenced no notice is requisite.—*Reg. v. Grimshaw* (10 Q.B., 717).

† This is an addition to the requirements under section 69 of the Act of 1835.

*Meetings and
Proceedings of
Council ;
Committees.*

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen* for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor being present, is not chosen, then such aldermen, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one third of the number of the whole council.

[At a town council meeting, where there were thirteen members present besides the chairman, on a question being put six voted for and four against and three besides the chairman did not vote, though they remained in the room. This vote was questioned on the contention that, according to section 69 of the Act of 1835, it was not good, as it was not a majority of the members present, who voted for it. The generally received view of this section was that a majority of *those present* was required for a resolution to be valid. This rule (10), which takes the place of section 69, effects a substantial change, or, at all events, clears up a doubtful point. Under the section named it was not certain if any members present at a meeting abstained from voting and a resolution was carried by a number less than a majority of those present it was valid].

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act.

13. Subject to the foregoing provisions of this schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

[The effect of section 69 of the Act of 1835, and section 3 of 36 & 37 Vict. c. 33 (1873), is preserved in the foregoing schedule].

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit,† for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval.

[With reference to the subject of committees the following statement of a case for opinion can be advantageously noticed here:—"The town council of S — are in the habit of appointing (on the 9th of each November) the whole of the council as a committee for finance, watching, and urban sanitary purposes, each member of the council, in fact, being a member of three important committees. The council also appoint other committees not composed of the whole number of members of the council, and it is the practice for these small committees to report at pleasure to one or other of the three large committees. Objection being taken to this procedure it was decided, with the tacit concurrence of the town clerk, that a report to one or other of the committees composed of the whole of the council can make no difference, seeing that they are really the council. Is this method irregular or illegal, and can the council properly appoint a committee 'of' and not 'out' of the council?" From inquiries instituted upon this statement it was elicited that the small committees

* This sentence of the paragraph would imply that the deputy mayor should be chosen unless some good reason exists for passing him over.

† The Watch Committee must not, however, exceed one-third of the Council. See section 190, sub-section 1.

*Meeting and
Proceedings of
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Committees.*

were not appointed by the council sitting as one or other of the three large committees before referred to, but by the council sitting as such, and that no special instructions were laid down as to how or to what body reports should be made. The following answer was returned:—“(1.) The practice of appointing the entire body of the council is *not* opposed to the law, and although it is not a practice observed elsewhere to the extent that obtains in §——, still it is a fact that most corporations appoint the whole body of the council to act upon some particular committee. Many people may say that it is farcical for a committee and a council composed of exactly the same members to exist side by side, but it is not so because an opposition in committee (whether successful or unsuccessful) can be repeated when the committee is constituted as the council without reference to what has occurred in committee. Say, for example, that a council of 12 constitute themselves a committee. When sitting in committee a subject is discussed and divided upon. The minority in the interval between the holding of the committee meeting and the meeting of the council (however long or short) may obtain information and learn facts, which, if known in committee, might have influenced some on the opposite side to vote with them. The opposition might then be renewed when sitting as a council, and if even they are not armed with fresh facts and arguments minorities are not prevented standing upon their strict rights and renewing the opposition in council. (2.) It is irregular for one committee to report to another, unless the committee reporting has been appointed by the committee to which it reports, or the council has specially instructed it to so report. If say, a committee is appointed by the council—sitting as the council—then the committee must report to the council unless it has a special instruction to report to some other committee. A committee, unless constituted as a sub-committee, so reporting, affords opportunity for an opposition being twice repeated, or in other words, for a subject to be fought three times—viz. (1) in the committee which reports, (2) in the committee reported to, and (3) in the council.” The fact of a committee being composed of the whole of the members of the council does not relieve it from the duty of reporting its action for approval to the council as such.]

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest.

[See paragraphs *a*, *b*, *c*, *d*, and *e*, subsection 2, and section 12 of this Act for exceptions to disqualification, which also hold good under this subsection].

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(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body.

[The effect of this subsection is to prevent the stoppage of any council or committee business by reason of the occurrence of a casual vacancy from whatever cause arising].

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

[This subsection (with paragraph 12 of the Second Schedule) effects a much needed settlement of the rules which ought and should guide the keeping and confirmation of the minutes of proceedings. It assimilates the procedure to that now generally observed by all regularly constituted bodies, namely, that the recorded proceedings of one meeting shall be submitted to and signed by the chairman of the next subsequent meeting. Previous to the passing of this Act the usage varied considerably. Some councils followed the course which is laid down in this subsection quite regardless of the fact that by section 69 of the Act of 1835, the

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Council;
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signature of any other person than that of the actual chairman of the meeting to which the minutes referred would be illegal. Other councils deemed that the law had been complied with by the chairman of any particular meeting signing the minutes of that meeting whenever presented to him for that purpose; whilst some so literally observed the directions "shall be signed by the mayor, alderman, or councillor *presiding at such meeting*" as to require the minutes to be fairly transcribed then and there, and signed before the chairman vacated his seat. In the event of volun in as correspondence or detailed particulars being ordered to be entered on the minutes, this last method often involved a tedious interval between the formal break up of the council and the release of the chairman from his position. It would seem that of the three methods referred to, the last named was undoubtedly a rigid adherence to the directions of the statute, whilst the first would be positively irregular, and the second open to doubt. By this subsection any one of these three courses would be correct].

(6.) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

[The effect of sections 69 & 70 of the Act of 1835, section 22 of 7 Will 4 & 1 Vict. c. 78 (1837), section 2 of 5 & 6 Vict. c. 104 (1842), and section 3 of 36 & 37 Vict. c. 33 (1873), is preserved in this clause. The "proof to the contrary" required by subsection 6 would have to be raised by writ of *quo warranto* in the High Court.—See judgment of Coleridge J., *Reg. v. Thomas*, 8, A. & E., 183].

Bye-laws.

Power of council to make bye-laws.

Bye-laws.

23.—(1.) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2.) Such a bye-law shall not be made unless at least two thirds of the whole number of the council are present.

(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the bye-law or part thereof, the bye-law or part dis-

allowed shall not come into force ; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

(5.) Any offence against such a bye-law may be prosecuted summarily.

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven* of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.

[The effect of sections 90 and 91 of the Act of 1835, and section 187 of 38 & 39 Vict. c. 55 (1875) is preserved in this clause. This power of making bye-laws is one of the most important entrusted to the council. It is settled by decided cases that they must be reasonable and not inconsistent with any statute or with the general principles of the law of the land; that a bye-law can be made for the regulation of any trade carried on within the borough, but not in restraint of it (see *Everett v. Groves*, 3 L.T., N.S., 669); that this power of regulation still remains, notwithstanding section 14 of the Act of 1835 abolished all exclusive rights of trading; and that the validity of a bye-law may be tested and tried in an action brought to recover the penalty, or, if the mode of enforcing the penalty be by distress, by an action of trespass. Within the limits of its operation, bye-laws have the same force as Acts of Parliament. *Hopkins v. Mayor of Swansea* (4 M. & W. 621)].

24.—The production of a written copy of a bye-law made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the bye-law.

Evidence of
bye-laws.

[The effect of section 2 of 36 & 37 Vict. c. 33 (1873) is preserved in this clause].

* The 38 & 39 Vict. c. 55. The section is as follows:—"Bye-laws made by the council of any borough under the provisions of section 90 of 6 Will. 4, c. 76, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act."

*Accounts and
Audit.*

The borough
auditors.

Accounts and Audit.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.

(2.) An elective auditor must be qualified to be a councillor, but may not be a member of the council or the town clerk or the treasurer.

(3.) The mayor's auditor must be a member of the council.

(4.) The term of office of each auditor shall be one year.

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors.

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy.

[The effect of sections 37 and 93 of the Act of 1835 and section 1 of 40 & 41 Vict. c. 66 (1871), is preserved in this clause. It will be noticed that the terms "mayor's auditor" and "elective auditor" are new designations].

Half-yearly
accounts of
treasurer.

26.—The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

[The effect of section 93 of the Act of 1835 and section 1 of 40 & 41 Vict., c. 66 (1877) is preserved in this clause. The dates generally approved by the Local Government Board are the 29th of September and the 25th of March, the latter date being that particularly named in the Local Taxation Returns Act, 1877, for the making of annual returns to the Local Government Board].

Audit and pub-
lication of
treasurer's
accounts.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year.

[The effect of section 93 of the Act of 1835 is preserved in this clause].

Returns to
Local Govern-
ment Board.

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local

Government Board, on the application of the council, from time to time prescribe. *Accounts and Audit.*

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court.

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

[The effect of section 10 of 6 & 7 Will. 4, c. 104 (1836), section 43 of 7 Will. 4 and 1 Vict. c. 78 (1837), and 23 & 24 Vict. c. 51 (1860), and 40 & 41 Vict. c. 6 (1877), is preserved in this clause. The general heads under which returns are now required by the Local Government Board are as follows:—*Receipts.* From borough rate; other rates; tolls and dues; rents; fines on renewal of leases; allowances from Her Majesty's Treasury for pay and clothing of police, prosecution, &c., of prisoners, and maintenance of borough lunatics; sale of property; loans effected on security of rates or property; and all other sources of income not included in foregoing. *Expenditure.* Public works, maintenance, and repairs; cost of police; cost of prosecutions, maintenance of prisoners; cost of lunatics chargeable to borough; contributions to school boards; loans repaid (with interest) during year; salaries and collectors' poundage; sinking fund; and all other charges not included in foregoing. Also a return of amount of loans outstanding at close of account].

Revising Assessors.

Revising Assessors.

29.—(1.) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough,* there shall be two revising assessors elected by the burgesses. *Revising assessors in non-parliamentary boroughs.*

(2.) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

(3.) The term of office of each revising assessor shall be one year.

* The abolition of the office of assessor in municipal boroughs included in the area of a parliamentary borough was effected by section 20 of 41 & 42 Vict. c. 26 (1878) as follows:—"After the commencement of this Act assessors shall not be elected in any municipal borough which as regards the whole or part of its area is co-extensive with or included in the area of a parliamentary borough, and any assessors elected in any such municipal borough before the commencement of this Act shall cease to hold office upon the commencement of this Act."

*Revising
Assessors.*

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

[Section 15 of 7 Will. 4 and 1 Vict. c. 78 (by which no burgess is eligible to be elected a member of the council of a borough while holding the office of assessor), applied only to assessors elected under 5 & 6 Will. 4, c. 76, s. 37, and did not apply to an assessor for revising the burgess list appointed under 7 Will. 4 and 1 Vict. c. 78, s. 4].

(5.) The appointment shall be signified to the council, in writing signed by the assessor, and be recorded in their minutes.

[The effect of section 37 of the Act of 1835, sections 4 and 17 of 7 Will. 4 and 1 Vict. c. 78 (1837), and section 20 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause].

*Division of
Borough into
Wards, or
alteration of
Wards.*

Division of Borough into Wards, or alteration of Wards.

30.—(1.) If two thirds of the council of a borough agree to petition, and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards.

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the *London Gazette* one month at least before the petition is so considered.

(3.) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

Proceedings for
division of
borough into
wards or altera-
tion of wards.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor. *Division of Borough into Wards, or alteration of Wards.*

(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the *London Gazette*, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If Her Majesty in Council does not approve the scheme, as originally prepared by the commissioner, it shall nevertheless be published in the *London Gazette*, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitively approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.*

* The remuneration is five guineas for every day he is employed over and above his travelling and other expenses (The Fourth Schedule, paragraph 1), and the same may not be paid without an order (The Fifth Schedule, Part II., paragraph 8.)

[The effect of sections 39, 40, 42, and 43 of the Act of 1835, section 10 of 7 Will. 4 and 1 Vict. c. 78 (1837), sections 1, 2, and 3 of 22 Vict. c. 35 (1859), section 4 of 32 & 33 Vict. c. 23 (1869), and 34 & 35 Vict. c. 67 (1871) is preserved in this clause].

*Supplemental
and Excep-
tional Provi-
sions.*

Occupation of
part of house.

Supplemental and Exceptional Provisions.

31.—In and for the purposes of this Act—

- (a.) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

[There may, by this subsection, be several persons deriving their qualification to be on the burgess roll by separate occupancy of part of the same building. The occupancy must be for trade, business or professional—not merely *residential*—purposes. “Separately” applies to the trade, as in *Reg. v. Mayor of Exeter* (L.R., 4 Q.B., 114):—*Held*, that a joint occupation is sufficient to confer the municipal franchise].

- (b.) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately, by reason only that the occupier is entitled to the joint use of some other part.

[Although by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26, s. 5), the term “dwelling-house” in the Representation of the People Act, 1867 (30 & 31 Vict. c. 102) is to mean part of a house separately occupied, yet, in order to be entitled to the borough franchise as the occupier of a dwelling-house, the person must have an occupation in respect of which he can be rated to the relief of the poor, and therefore he is not entitled to such dwelling-house franchise by reason of the occupation of part of a house if he occupies such part as a lodger.—“The tenant of two rooms, which he took unfurnished at a weekly rent, had the exclusive use of such rooms, and a key of the outer door of the house. His landlord also had a key of the outer door, and resided in all the rest of the house, but supplied no attendance or service to such tenant:—*Held*, that such tenant occupied the rooms as a lodger, and consequently that in respect of such occupation he could not acquire the dwelling-house franchise under the Representation of the People Act, 1867.”—“The tenant of two rooms, which he took unfurnished at a weekly rent, had in common with the other tenants of the house, which was wholly let out on similar tenancies, the user of the passages, staircase, street door, and usual conveniences of the house. The landlord and not the tenant was rated, and the landlord did all repairs inside and out, but he did not reside in the house, nor did he, save as aforesaid, retain the control and dominion over the house or render any services to any of the tenants:—*Held*, that such tenant did not occupy the rooms as a lodger but as an occupying tenant under the Representation of the People Act, 1867, and that he could therefore acquire the dwelling-house franchise in respect of such occupation.” *Bradley*, appellant, *Bayless*, respondent; *Morfee*, appellant, *Norris*, respondent; *Kirby*, appellant, *Biffen*, respondent. (L. R., Q. B. D., vol. 8., p. 195.)]

Claim by occu-
prier to be rated.

32.—(1.) If an occupier of any qualifying property, whether

the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

Supplemental and Exceptional Provisions.

[The landlord is not relieved from liability to the poor rate by the operation of this subsection should the tenant fail to act as here permitted or make default: and by the following subsection, any *laches* on the part of the overseers will not deprive the tenant of his right to qualify in respect of assessment to the poor rate. Generally, the clause may be regarded as the tenant's means of securing his franchise privileges notwithstanding omission or default, or the possibility of such, on the part of the landlord.]

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

[The effect of section 11 of the Act of 1835 is preserved in this clause. By 59 Geo. 3, c. 12, s. 19 the vestry of any parish may resolve that the owners of all houses in the parish, being the immediate lessors of the actual occupier, which shall be let "at any rent not exceeding twenty pounds by the year for any less term than one year, or any agreement by which the rent shall be reserved or made payable at any shorter period than three months," shall be assessed to the rates in respect of such houses, instead of the actual occupiers:—*Held* (by Lord Coleridge C.J. and Brett L.J., Baggallay L.J. dissenting) that this section has no application to houses let at a weekly rent amounting to more than twenty pounds by the year.—*Iles*, appellant; *The Assessment Committee of West Ham Union and others*, respondents. (L.R., Q. B. D., vol 8, p. 69)].

33.—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

Rules as to qualification of burgess on succession, &c.

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

*Supplemental
and Excep-
tional Provi-
sions.*

(4.*) A person shall not be disentitled to be enrolled as a burgess by reason only—

- (a.) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority; or
- (b.) That his child has been admitted to and taught in any public or endowed school.

[The effect of sections 9, 10, and 12 of the Act of 1835, sections 8 & 9 of 7 Will 4 and 1 Vict. c. 78 (1837), and section 1 of 32 & 33 Vict. c. 55 (1869), is preserved in this clause].

Obligation to
accept office or
pay fine.

34.—(1.) Every qualified person elected to a corporate office, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration† required by this Act within five days after notice of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by bye-law determine.

(2.) If there is no bye-law determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds

[There is no authority given by this Act to remit this penalty which is fixed in amount in case a bye-law has not otherwise determined].

(3.) The persons exempt under this section are—

- (a.) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and
- (b.) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-accept-

* See page 28 (Section 9, subsection 3, paragraph b).

† The declaration is as follows:—"I, A.B., having been elected mayor [or alderman, councillor, elective auditor, or revising assessor] for the borough of _____, hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [and in the case of the person being qualified by estate say, And I hereby declare that I am seised or possessed of real or personal estate, or both [as the case may be], to the value or amount of one thousand pounds, or five hundred pounds [as the case may require], over and above what will satisfy my just debts]."—Schedule VIII., Form A.

ance thereof, claims exemption within five days after notice of his election.

Supplemental and Exceptional Provisions.

(4.) A fine payable under this section shall be recoverable summarily.

[The effect of section 51 of the Act of 1835 is preserved in this clause].

35.—A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration* as in the Eighth Schedule, act in the office except in administering that declaration.

Declaration on acceptance of office.

[The effect of section 50 of the Act of 1835 is preserved in this clause].

36.—(1.) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof.

Fine on resignation, &c.

[See also comment upon subsections 1 and 2 of section 34, at page 48].

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

[The effect of section 8 of 6 & 7 Will. 4, c. 104 (1836) is preserved in this clause. The Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, sec. 20), enacts, "If any person desiring to make an affidavit or deposition shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge, or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration, in form prescribed. Section 103 extends provisions to every court of civil judicature in England or Ireland. The Supreme Court of Judicature Act, 1878 (36 & 37 Vict. c. 66), says "oath" shall include solemn affirmation and statutory declaration].

37.—A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible.

Re-eligibility of office holders.

[The effect of sections 25 and 31 of the Act of 1835 is preserved in this clause, but as these sections did not render it quite clear whether revising assessors and elective auditors are re-eligible, this clause has been drafted in general terms].

* See preceding page for the form of declaration.

*Supplemental
and Excep-
tional Provi-
sions.*
Mayor and
aldermen to
continue mem-
bers of council.

38.—The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years.

[The effect of section 26 of the Act of 1835 is preserved in this clause].

Avoidance of
office by bank-
ruptcy or
absence.

39.—(1.) If the mayor, or an alderman or councillor—

(a.) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise; or

[The case of *Aslatt v. Mayor and Corporation of Southampton*, in the Chancery Division of the High Court of Justice (L.R., C.D. vol. 16, p. 143), was a motion made to restrain the defendants, the borough town council, from avoiding or declaring void the office of alderman of the borough held by the plaintiff, and from appointing or electing any successor to him and interfering with his rights and privileges as an alderman. The plaintiff in January submitted a proposition to his creditors for a composition on their debts, and this composition was accepted by a certain number of the creditors by a resolution and by a circular letter. The plaintiff did not execute any composition deed, and had not taken any proceedings under the Bankruptcy Act, 1869, for an arrangement or composition with his creditors. He had, however, executed a bill of sale in which he admitted, in cross-examination, that the consideration was stated to be the finding of money for the purposes of his composition. The defendants had not taken any step to avoid the office until the 4th inst., when, in consequence of the death of another alderman, the mayor called a meeting of the corporation to be held on the 8th inst., at half-past two, to declare the office of alderman held by the plaintiff void, and to elect another alderman in the place of the gentleman who was dead, and for other business. The grounds upon which the defendants contended that the office was vacant were by virtue of the Municipal Corporations Act, 1835, s. 52, by which any alderman who shall "compound by deed with his creditors shall immediately become disqualified, and shall cease to hold the office of alderman, and the council shall forthwith declare the office to be void and signify the same," as therein provided. By the Debtors Act, 1869, the disqualification is extended to any person who has been declared bankrupt, or arranged or compounded with his creditors under the Bankruptcy Act, 1869, whether by deed or otherwise. For the defendants on the motion it was argued that the plaintiff had in effect "compounded by deed" with his creditors, and that his case was, at all events, within the mischief intended to be prevented by the above disqualification. It was further argued that the Master of the Rolls had no jurisdiction to entertain the case, which should have been brought by some proceeding in the Queen's Bench Division. Jessel, M.R. said that the case was one of great importance, and he should have been glad if it had been possible to have had further time to consider the point. As the meeting had, however, been called for that day, he was compelled to decide it at once, and his decision must, to a great extent, be a final one under the circumstances. If any miscarriage did occur, the defendants were only to blame for not having brought the matter to an issue previously. In his opinion, what the plaintiff had done was not a "composition by deed" within the meaning of the Municipal Corporations Act, 1835, s. 52, and it could also not be said to be an arrangement or composition under the Bankruptcy Act, 1869. He was bound, as the sections were penal, to construe them strictly, and whatever he might think was the spirit of the Acts in question, technically the plaintiff was not liable to the penalties imposed thereby, and he had not therefore ceased to hold office, and the defendants were not justified in impeding him in the exercise of his duties. He was further of opinion that whatever power the old Court of Chancery might have had in a case like the present, he now had ample jurisdic-

tion, under section 25 of the Judicature Act, 1873, to grant an injunction in all cases for the protection of a legal right or the prevention of a threatened wrong, where it was "just and convenient" so to do. He also thought that this action was not one of those assigned to the Queen's Bench Division, and, even if it had been, he still considered that he had jurisdiction to interfere where, as here, his interference was imperatively demanded, and where, if he refused to hear the application, it would, in effect, be a denial of justice. He therefore granted an injunction restraining the defendants from avoiding the office of alderman, and from interfering with the plaintiff in his duties and privileges thereof. By consent this injunction was made perpetual, with costs].

- (b.) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months:

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith* declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

[These directions must be strictly followed. Office not vacant until the formalities be complied with. *Reg. v. Mayor of Leeds*, (7 A. & E., 963); *Reg. v. Mayor of Oxford* (6 A. & E., 349)].

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge.

[The foregoing subsections have been framed with reference to the case of *Hardwick v. Brown* (L. R., 8 C. P., 406) as follows:—B, a town councillor of Newcastle, made a composition with his creditors under s. 126 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), under which a resolution was come to for a composition of 3s. 6d. in the pound (secured) in satisfaction of B's debts, the first instalment of which was payable six months after registration of the confirming resolution. The registration took place on the 23rd of September. On the 4th of November, B placed his resignation of his office of councillor in the hands of the town clerk, and announced his resignation by advertisement on the 6th of November, and by the same advertisement offered himself for re-

* "Forthwith" *per* Lord Campbell, C.J., "may have a different meaning, according as the act to be done is ministerial or judicial." *Costor v. Hetherington* (28 L. J., N. S., M. C., 199). Ministerial, it is "within a reasonable time"—judicial—"upon application being made."

*Supplemental
and Excep-
tional Provi-
sions.*

election. At the annual meeting of the town council on the 9th of November, the above letter was read, and B's resignation was accepted by the council; and on the 18th (there having been no declaration by the council that the office was void) he was re-elected a town councillor. Upon a case stated for the opinion of the Court, pursuant to s. 15 of the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 40):—*Held* (by Bovill, C.J. and Keating and Honyman, J.J.), that B, having by reason of his having compounded with his creditors ceased to hold the office of councillor, was incapable of resigning it, and the council not having pursued the course pointed out by s. 52 of the Municipal Corporations Act, that the election was therefore void. *Held*, also, that B not having "paid his debts in full," he was not qualified for re-election under that section.

A burgess, from the mere fact of being an uncertificated bankrupt, is not disqualified from being elected a councillor or alderman; although bankruptcy during the term of office, would act as an immediate cause of incapacity, *Rex v. Chitty* (5 A. & E., 609)].

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.

[The effect of section 52 of the Act of 1835, section 21 of 32 & 33 Vict. c. 62, (1869) and generally 32 & 33 Vict. c. 71 (The Bankruptcy Act, 1869) is preserved by this clause. Subsection 4 is a necessary proviso in conjunction with the obligatory character of section 34; otherwise the acceptance of office or payment of the monetary penalty in default would be easily avoided by non-residence.]

Filling of
casual
vacancies.

40.—(1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

[The case of *Connell v. Mayor and Corporation of Newcastle*, in the Queen's Bench Division of the High Court of Justice, is interesting as defining the duty of a corporation in the event of a vacancy in the office of alderman through a previous invalid election. The petitioner moved for a rule for a *mandamus* calling upon the defendants to proceed to the election of an alderman to fill up the vacancy in the number of aldermen in the corporation. It appeared that on the 9th of November the corporation elected Mr. I. Lowthian Bell to fill the vacancy; but it was subsequently found that Mr. Bell, although living close to Newcastle, did not possess the necessary qualification. The election was consequently invalid. The corporation did not oppose the application for a rule, or that it should be made absolute. The petitioner therein applied that the rule should be made absolute with costs, seeing that the matter had arisen out of the mistake of the corporation. The corporation resisted the application to saddle them with the costs, as, in point of fact, nobody was to blame; but, acting on a suggestion from the Bench (Field and Manisty, JJ.) that the prosecutor being a private person the costs ought to be paid by the public body, they consented to the rule being made absolute with costs. Rule made absolute accordingly].

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be

elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

[The effect of sections 27, 47, 49, and 51 of the Act of 1835, and section 11 of 7 Will. 4 and 1 Vict. c. 78 (1837), is preserved in this clause].

41.—(1.) If any person acts in a corporate office without having made the declaration by this Act required, or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.*

Penalty on unqualified person acting in office.

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein.

[The effect of section 53 of the Act of 1835 and section 7 of 6 & 7 Will. 4, c. 105 (1836), is preserved in this clause. Subsection 2 provides for a double disqualification that therein defined not being sufficient of itself for liability to the fine to attach].

42.—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.

Validity of acts done notwithstanding disqualification, &c.

[The Corrupt Practices Act, 35 & 36 Vict. c. 60, s. 23 (1872), provides that acts of all persons declared not elected under the provisions of that statute shall be valid, till the decision that they are not elected has been duly certified to the town clerk].

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

* See *post* Part XII., as to Legal Proceedings.

*Supplemental
and Excep-
tional Provi-
sions.*

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

[The effect of section 53 of the Act of 1835, and sections 1 & 5 of 7 Will. 4 and 1 Vict. c. 78 (1837), is preserved in this clause.]

*Duties of town
clerk, deputy,
and treasurer
during vacancy
or incapacity.*

43.—If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

[The effect of section 16 of the Act of 1835 is preserved in this clause].

PART III.

PREPARATIONS FOR AND PROCEDURE AT ELECTIONS.

Parish Burgess Lists ; Burgess Rolls ; Ward Rolls.

*Parish
Burgess Lists ;
Burgess Rolls ;
Ward Rolls.*

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878.

Preparation
and revision of
parish burgess
lists.

[Sections 15 to 23 of the Act here referred to (40 & 41 Vict. c. 26), being that portion which enacts the method of revision, may be here usefully cited as follows:—S. 15. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the lists of parliamentary voters and the burgess lists shall, so far as practicable, be made out and revised together. In every such case the overseers of every parish situate wholly or partly either in the parliamentary borough or in the municipal borough shall, on or before the last day of July in every year, make out a list of all persons entitled under any right conferred by the Reform Act, 1832, or by s. 3 of the Representation of the People Act, 1867, to be registered as voters for the parliamentary borough in respect of the occupation or property situate wholly or partly within that parish, or entitled to be enrolled as burgesses of the municipal borough in respect of the occupation of any property so situate. With respect to every list so made out the following provisions shall have effect:—(1.) The lists shall be in substitution for the lists of persons so entitled, which are required to be made out under the Parliamentary Registration Acts and the Municipal Corporation Acts: (2.) Where the parish is situate, wholly or partly, both in the parliamentary borough and in the municipal borough, the list for the parish shall be made out in three divisions: Division One shall comprise the names of the persons entitled both to be registered as parliamentary voters under a right conferred as aforesaid, and to be enrolled as burgesses; Division Two shall comprise the names of the persons entitled to be registered as parliamentary voters under a right conferred as aforesaid, but not to be enrolled as burgesses; Division Three shall comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters under a right conferred as aforesaid: (3.) Each list shall state the surname and other name or names of every person whose name is inserted therein, his place of abode, the nature of his qualification, and the situation and description of the property in respect of which he is entitled: (4.) Each list shall be signed and otherwise dealt with in manner directed by the Parliamentary Registration Acts with respect to the alphabetical lists mentioned in s. 13 of the Parliamentary Registration Act, 1843: (5.) Where no part of the parish is situate within the municipal borough, the list for the parish shall be deemed to be a list of voters for the parliamentary borough: (6.) Where no part of the parish is situate within the parliamentary borough, the list for the

Parish

Burgess Lists ;

Burgess Rolls ;

Ward Rolls.

parish shall be deemed to be a burgess list for the municipal borough : (7.) Where the list is made out in divisions, Divisions One and Two shall be deemed to be lists of voters for the parliamentary borough, and Divisions One and Three shall be deemed to be burgess lists for the municipal borough : (8.) The lists, and, if the lists are made out in divisions, each division thereof shall, if and so far as the local authority from time to time direct, according to convenience for use, be framed in parts for polling districts or wards ; and where the polling districts and wards are not contemninous, in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists. S. 16. In the case of any parliamentary borough in which any persons are entitled to be registered as freemen, or under any right other than a right conferred by the Reform Act, 1832, or s. 3 of the Representation of the People Act, 1867, the registration of such persons shall be carried out in the manner directed by the Parliamentary Registration Acts, as modified by this Act. S. 17. In the case of a parliamentary borough which includes in whole or in part more municipal boroughs than one, each such municipal borough shall, for the purposes of this Act, be dealt with separately, and as if each were the only municipal borough included in whole or in part in such parliamentary borough ; and if any parish is partly in one and partly in another or others of such municipal boroughs, so much thereof as is in any one of such municipal boroughs shall, for the purposes of this Act, be dealt with as a separate parish. The town clerk of each such municipal borough shall, so far as regards the area of such municipal borough, issue the precepts and perform the other duties to be performed by the town clerk under and shall be the town clerk for the purposes of the Parliamentary Registration Acts and this Act. S. 18. The Municipal Corporations Acts shall not, as to anything prior to the completion of the revision of the burgess lists, apply to any burgess list made out under this Act, and instead thereof the Parliamentary Registration Acts, as modified by this Act, shall, up to the completion of the revision of the burgess lists, apply to every such burgess list, as if it were a list of parliamentary voters made out under those Acts, and as if the municipal borough to which such burgess lists relate were a parliamentary borough : Provided as follows :—(1.) Nothing in this Act shall authorize a person entered on a burgess list, not being also entered on a list of parliamentary voters, to make any objection in respect of a list of parliamentary voters, or authorize any person entered on a list of parliamentary voters, not being also entered on a burgess list to make any objection in respect of a burgess list ; (2.) The last day for revising a burgess list made out under this Act shall be the 12th October : and (3.) The burgess lists when revised shall be copied for the burgess roll in manner directed by the Municipal Corporation Acts. S. 19. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the separate lists of the persons entitled to be elected councillors or aldermen of the municipal borough, though not entitled to be on the burgess roll, shall be made out at the same time and in the same manner as the burgess lists, and all the provisions of this Act with respect to the burgess lists shall apply to those separate lists. S. 20. After the commencement of this Act assessors shall not be elected in any municipal borough which as regards the whole or part of its area is co-extensive with or included in the area of a parliamentary borough, and any assessors elected in any such municipal borough before the commencement of this Act shall cease to hold office upon the commencement of this Act. S. 21. If and so far as the local authority so direct, the lists of parliamentary voters and registers of parliamentary voters in parliamentary boroughs, and the burgess lists and burgess rolls in municipal boroughs, and the lists of claimants and persons objected to in parliamentary boroughs and municipal boroughs respectively, or any of those documents, shall, so far as they relate to persons qualified in respect of the ownership or occupation of property (including persons qualified in respect of lodgings) be so arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists, registers, and rolls to record the qualifying premises in successive order in the street or other place in which they are situate, subject in the case of a municipal borough divided into wards to the division of the burgess roll into ward lists. The local authority in this Act means as regards a parliamentary borough the authority having power to divide the parliamentary borough into polling districts, and as regards a municipal borough the council of the municipal borough. S. 22. Where a person is

entered in respect of lodgings on the register of voters for the time being in force, and desires to be entered on the next register in respect of the same lodgings, he may claim to be so entered by sending notice of his claim to the overseers of the parish in which his lodgings are situate on or before the 25th July. The overseers shall on or before the last day of July make out a list of all persons so claiming, and if they have reasonable cause to believe that any person whose name is entered on the list is not entitled to be registered or is dead, shall add in the margin of the list opposite his name the words "objected to," or "dead" as the case may be. The lists so made out shall be signed, published, and otherwise dealt with in the same manner as the alphabetical lists mentioned in s. 13 of the Parliamentary Registration Act, 1843, and shall for the purposes of the Parliamentary Registration Acts be deemed to be lists of voters, and the provisions of the Parliamentary Registration Acts as to objections shall apply to such lists, and the persons against whose names the overseers have so written the words "objected to" or "dead" shall be deemed to be duly objected to. S. 23. In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim shall, for the purposes of revision, be *prima facie* evidence of his qualification"].

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(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule.

Part I. of Schedule III. is as follows :—

1. On or before each first of September, the overseers of each parish shall make, sign, and deliver to the town clerk a list, called the parish burgess list, of all persons entitled to be enrolled in the burgess roll for the year in respect of property in that parish.*

2. The overseers shall keep a printed copy of the parish burgess list made by them open to public inspection on the first fifteen days of September.

3. The town clerk shall cause a printed copy of all the parish burgess lists to be fixed on the town hall, and to be kept so fixed during the last seven of those fifteen days.

4. Every person whose name is not in a parish burgess list, and who claims to have it inserted therein (in this Act referred to as a claimant), shall, on or before the fifteenth of September, give notice in writing of his claim to the town clerk.

5. Every person whose name is in a parish burgess list may object to any other person as not being entitled to have his name retained in that or any other parish burgess list.

6. Every person so objecting (in this Act referred to as an objector), shall, on or before the fifteenth of September, give to the town clerk, and also give to the person objected to or leave at or on the property for which he appears in the parish burgess list to be rated, notice in writing of the objection.

7. The town clerk shall make two separate lists of the claimants and the persons objected to (in this Act referred to as respondents), and shall cause printed copies thereof to be fixed on the town hall, and to be kept so fixed during the last seven days of September.

8. He shall also keep a printed copy of each of these lists open to public inspection on any day during the same seven days.

9. The mayor and the two revising assessors shall in each year revise the parish burgess lists.

10. They shall for this purpose hold an open court in the borough on some or one of the first fifteen days of October.

* Overseers are entitled to have reasonable expenses incurred by them in preparing the lists, to be defrayed out of the borough funds.

*Parish
Burgess Lists ;
Burgess Rolls ;
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11. They shall give three clear days' notice of the holding of the court, by notice fixed on the town hall.

12. The town clerk shall at the opening of the court produce the parish burgess lists, and a copy of the lists of claimants and respondents.

13. The court shall insert in the parish burgess lists the name of every person who has duly claimed to have his name inserted therein, and is proved to the satisfaction of the court to be so entitled.

14. The court shall expunge from the parish burgess lists the name of every person proved to the court to be dead.

15. Subject as aforesaid, the court shall retain in the parish burgess lists the name of every person to whom objection has not been duly made.

16. The court shall also retain therein the name of every respondent, unless the objector appears by himself, or by some person on his behalf, in support of the objection.

17. Where the objector so appears, the court shall require proof of the respondent's qualification, and, if it is not proved to the satisfaction of the court, shall expunge his name from the parish burgess list.

18. If the name of any person is entered in respect of property situate in more than one ward, the court may call upon him to choose and if he does not choose, may determine in which of those wards he shall be entitled to vote.

19. The court shall correct any mistake and supply any omission proved to the court to have been made in any of the lists with respect to the name or abode of any person, or the description of any property.

20. The overseers, vestry clerks, and collectors of poor rates of every parish shall attend the court.

21. The court may require any overseer or person having the custody of any book containing any poor rate made in any year in any parish to produce the same at the court for inspection.

22. The court may examine on oath the town clerk, overseers, vestry clerks, and collectors, and any claimant, objector, respondent, or witness.

23. The court shall, on the hearing in open court, determine on the validity of all claims and objections.

24. The mayor shall, in open court, write his initials against each name inserted or expunged, and against any part of the lists in which a mistake has been corrected or omission supplied, and shall sign his name to every page of the lists so revised.

25. The Mayor may adjourn the court from time to time, so that no adjourned court be held after the fifteenth of October.

(3.) In either case the lists shall be styled the parish burgess lists.

[The effect of sections 15, 17, 18, 19, and 44 of the Act of 1835, section 7 of 20 & 21 Vict. c. 50 (1857), section 18 of 41 & 42 Vict. c. 26 (1878), and other sections of that Act cited under subsection 1, are preserved in this clause. It will also be noticed that a new designation is introduced in the clause (sub-section 3), namely, that of "Parish burgess lists"].

*The burgess roll
and ward
rolls.*

45.—(1.) When the parish burgess lists have been revised and signed, the revising authority shall deliver them to the town clerk, and a printed copy thereof, examined by him and signed by him, shall be the burgess roll of the borough.

(2.) The burgess roll shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelvemonths beginning on that day.

[This subsection is framed with reference to the case of *Budge v. Andrews Parish and others* (3 C.P.D. 510), which was a special query to the Court as to whether *Burgess Lists*; a burgess on the roll in force at the time of the nomination but not on the roll *Burgess Rolls*; upon which the election proceeds can properly be nominated. *Held* in the *Ward Rolls*. affirmative (by Grove and Lindley, JJ.)].

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts.

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5.) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.

(6.) A burgess shall not be enrolled in more than one ward roll.*

[This subsection repeals s. 44, 5 & 6 Will. 4 c. 76: "If a burgess be rated in respect of distinct premises in two or more wards he shall be entitled to be enrolled, and to vote in such one of the wards as he shall select, but not in more than one." A burgess of a borough, divided into wards, was on the roll for two wards; at the election of town councillors he voted for H in one ward, and immediately afterwards voted in the other ward:—*Held*, that the vote for H was good; for that by voting in one ward the burgess had properly made his selection, and the fact of his voting afterwards in the other ward could not vitiate his previous vote. *Reg. v. Harraid* (L. R., C. P., vol 8, p. 418)].

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878,† it shall have the same effect as the original, and may be delivered instead thereof.

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

* If a person is qualified to be a burgess in more than one ward he must elect in which ward he will be enrolled, and if he fails to do so, the revising authority may enrol him at discretion in any one of those in which his qualification arises.

† This section is as follows:—"The lists, if made out in divisions under this Act, shall when revised be delivered to the town clerk, to whom in respect of the area to which the lists relate revised parliamentary lists ought to be delivered. The revising barrister shall as part of the business of the revision, at the request of the town clerk of any municipal borough the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough, sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough. Every such duplicate shall be prepared by the town clerk at whose request it is so signed, and shall be kept by him for use for municipal purposes," 41 & 42 Vict. c. 26.

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Ward Rolls.* (9.) No stamp duty shall be payable in respect of the enrolment of a burgess.*

[The effect of sections 22, 44 and 45 of the Act of 1835, and sections 31 and 33 of 41 & 42 Vict. c. 26, have been preserved in this clause. See *Reg. v. Strachan* (L. R. C. v. 7, 463), as to operation of Stamp Act (33 & 34 Vict. c. 97, ss. 3, 102, and sch.) which imposes a penny stamp on "Voting paper."—Does not extend to voting papers used under 7 Will. 4 and 1 Vict. c. 78, ss. 13, 14, at a meeting of the town council of a municipal borough for the election of aldermen].

Arrangement
of lists and
rolls.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate.

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

[The effect of sections 22 and 45 of the Act of 1835, and section 21 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause].

Correction of
burgess roll.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act.

[The section is as follows :—"Where burgess lists are revised under this Act, the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on the revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register in pursuance of any judgment or order of the court of appeal shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him"].

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name ex-

* The Stamp Acts generally provide that there shall be paid on admission in England or Ireland as a burgess, or into any corporation or company, in any city, borough or town corporate, in respect of birth, apprenticeship, or marriage, or in Ireland, in respect of being engaged in any trade, mystery or handicraft, the sum of £1; upon any other ground £3. The exemptions are admission of any person to the freedom of the City of London, by redemption and enrolment as in this subsection. As the Inland Revenue authorities attach quite a different meaning to the terms "enrolment" and "admission" (this on authority), the insertion of the subsection may be regarded as a desire to avoid the possibility of doubt on the subject.

punged at the revision of the lists may apply, within two months after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a mandamus to the mayor to insert his name in the burgess roll; and thereupon the court shall inquire into the title of the applicant to be enrolled.

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[The word "shall" after "court" in this subsection is used with reference to the case of *Reg. v. Mayor of Harwich* (8 A. & E., 919). After a burgess roll has been made up in the manner provided by 5 & 6 Will. 4 c. 76, the persons whose names are on the roll are entitled to vote at the election of councillors, and upon the trial of an information, their right cannot be questioned.—*Reg. v. Tugwell* (38 L. J. R., N. S., Q. B. 12)].

(3.) If the court grants a mandamus, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.

[The effect of section 24 of 7 Will. 4 and 1 Vict. c. 78 (1837), and section 35 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause].

48.—(1.) The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.

*Printing and
sale of burgess
roll and other
documents.*

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund.

[The effect of sections 15, 17, and 23 of the Act of 1835, and section 30 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause. The section last referred to is as follows:—"Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the expenses properly incurred by the town clerk (including in his expenses the matters mentioned in s. 31 of the Representation of the People Act, 1867), and the expenses properly incurred by the overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists, and all moneys received in respect of any of those lists, or in respect of any fine imposed by the revising barrister on the revision of the lists, shall be respectively paid and applied as follows:—(1.) If the area of the parliamentary borough and the area of the municipal borough are co-extensive, one-half of the expenses shall be defrayed in the manner provided by the Parliamentary Registration Acts as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund, and one-half of the moneys received as aforesaid shall be applied in the manner directed in those Acts, and the other half shall be paid to the borough fund. (2.) In all other cases the expenses and receipts in respect of the area common to the parliamentary borough and to a municipal borough shall, as to one-half thereof, be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts, and shall as to the other half thereof be defrayed out of and paid to the borough fund of such municipal borough. And the expenses and receipts in respect of an area exclusively parliamentary shall be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts. And the expenses and receipts of an area exclusively municipal shall be defrayed out of and paid to the borough fund of

*Parish Burgess Lists ;
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the municipal borough comprising such area. Any expenses and receipts incurred or arising in respect of more than one such area shall be apportioned between the several areas in respect of which they are incurred or arise, in the proportion as nearly as may be in which the same are incurred and arise in respect of the several areas, regard being had to the number of parliamentary voters or burgesses in each area, or any other circumstances occasioning the expenses or giving rise to the receipts. The revising barrister shall, as part of the business of the revision, determine, if necessary, in respect of what area or areas any expenses or receipts are incurred or arise, and how much thereof is attributable to each area. The remuneration of the revising barrister shall be paid as heretofore under the Parliamentary Registration Acts: Provided always, that in the case of a municipal borough whose burgess lists are revised under this Act, there shall be paid out of the borough fund to the revising barrister, by way of additional remuneration in respect of his additional work on account of the municipal revision for such municipal borough, a remuneration at the rate mentioned in s. 3 of the Municipal Corporations Act, 1859”].

Separate list of persons qualified to be councillors but not to be burgesses.

49.—(1.) The overseers of each parish shall at the same time that they make the parish burgess list make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough.

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

[The effect of section 3 of 32 & 33 Vict. c. 55 (1869), and section 19 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause. The distinction here should be noted. A “burgess” must reside within seven miles from the borough; a councillor elected under the property qualification, if resident beyond the seven miles, but within the fifteen miles, is *not* a burgess until he is elected].

*Election of
Councillors.*

Borough and
ward elections.

Election of Councillors.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

(2.) Where a borough has wards, there shall be a separate election of councillors for each ward.*

[The effect of sections 43 and 44 of the Act of 1835 is preserved in this clause].

Title to vote.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper, and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess

* The extreme number of councillors named in the schedules of the Act of 1835 is forty-eight, and although special and local Acts of Parliament have in some instances varied the warding and representation, that number has not been exceeded.

roll, or, in the case of a ward election, the ward roll, and not otherwise.* *Election of Councillors.*

[Sec 22 Vict. c. 35, s. 6, where a municipal borough is divided into wards, the person nominating a candidate for town councillor, must be entitled to vote for the particular ward for which he nominates, and if he be entitled to vote only for another ward, his nomination and the election of the candidate are void. *Reg. v. Parkinson* (L.R., 3 Q.B., 11)].

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward.

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.

[The effect of sections 29 and 44 of the Act of 1835, section 16 of 35 & 36 Vict. c. 60 (1872), and section 5 of 38 & 39 Vict. c. 40 (1875), is preserved in this clause].

52.—The ordinary day of election of councillors shall be the first of November.† *Day of election.*

[The effect of section 30 of the Act of 1835 is preserved in this clause].

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor. *Returning officer at election.*

[There have been some important decisions given in the supreme courts with respect to the mayor's position as returning officer. The principal ones are as follows:—

Under sections 32—35 of the Act of 1835, a mayor of a borough not divided into wards, who with the two assessors presides at and declares the result of an election of town councillors for the borough, is precluded from being a candidate for election as town councillor, inasmuch as, acting as returning officer, he cannot return himself. Under section 28, which enacts that no person shall be eligible as councillor “during such time as he shall hold any office or place of profit other than that of mayor” (in the disposal of the borough), the mayor is eligible as town councillor, if the borough is divided into wards, for a ward in which he is not acting as returning officer. *Reg. v. Owens* (2 El. & El. 86.)

In another case at an election of councillors for a borough not divided into wards, the mayor was a candidate and also acted as returning officer. There was evidence that a number of the electors who voted for him knew that he was acting as returning officer, but not of their knowledge that he was thereby disqualified from being a candidate.—*Held* that, although the electors who so voted were proved to have known of the fact, the legal effect of which is to disqualify a candidate, it could not without further evidence be presumed that they voted knowing that he was actually disqualified and thereby threw away their votes. *Reg. v. The Mayor, Aldermen and Burgesses of Tewkesbury* (37 L. J. R., N. S., Q.B. 283).

* See section 47 (page 61 *ante*) as to the case of *Reg. v. Tugwell*.

† The most recent charters of incorporation have invariably specified under their authority this date for the first election. The convenience is obvious—two general elections within twelve months being thus avoided.

Election of Councillors.

By section 38 of the Act of 1835 no person is qualified to be elected councillor of any borough during such time as he shall hold any office or place of profit, other than that of mayor, in the gift or disposal of the council of the borough. By section 32 every election of councillors is to be held before the mayor and assessor, who by section 35 are to examine the voting papers for the purpose of ascertaining which persons are elected. By section 36, if the mayor of any borough shall, at the time when it shall be necessary to execute the powers and duties of mayor with respect to elections, be dead, absent, or otherwise incapable of acting, the council of such borough shall forthwith elect one of the aldermen to execute all such powers and duties in the place of the mayor.—*Held* that, although the mayor cannot act as returning officer at an election when he himself is a candidate, yet he may be lawfully elected or re-elected councillor during his mayoralty, after previously declaring his incapacity to act as returning officer at the election by reason of his being a candidate, and after an alderman of the borough has been elected to fulfil the duties of mayor at the election, as the words “incapable of acting” in the statute are not limited to cases of physical incapacity. *Reg. v. White* (36 L. J. R., N. S., Q. B. 267)].

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the council at the meeting of the ninth of November.

[The effect of sections 32 and 43 of the Act of 1835 is preserved in this clause. At the election of a councillor for a ward in a borough the mayor is not the returning officer within the meaning of section 20 of the Ballot Act, unless he also happens to be alderman of such ward, or unless the office of alderman in such ward be vacant. *Harmon v. Park* (L. R., Q. B. D. 6, p. 323). Sub-section 2 renders it necessary that an alderman be assigned, and supersedes *ex-officio* aldermanic discharge of duties as returning officer].

Notice of election.

54.—Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

[The effect of section 1 of 38 & 39 Vict. c. 40 (1875) is preserved in this clause].

Nomination of candidates.

55.—The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

[The effect of sections 1, 2, and 7 of 38 & 39 Vict. c. 40 (1875), and section 34 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause. The rules of Part II. of the Third Schedule are as follows:—

1. Every candidate for the office of councillor must be nominated in writing.*

[A candidate at a municipal election was twice nominated, one nomination being good, but the other being bad. His name appeared in the ballot papers twice. Once in respect of each nomination. 71 voters appended their marks to his name under one nomination, and 301 under the other. All the voters so voting intended to vote for the candidate, and if both classes of voters could be added together, he had a majority, and was entitled to be returned.—

* See Form I. Part II. of the Eighth Schedule.

Held, that having been duly nominated, and having a majority of votes, he was entitled to be returned. *Held*, also, that the defect in the bad nomination was not cured by the 12th and 13th rules of the 1st schedule of the Ballot Act, inasmuch as those rules do not apply to the nomination at a municipal election. *Barnstaple Municipal Election* (L. R., C. P., vol. 10, p. 476)].

Election of Councillors.

2. The writing must be subscribed by two burgesses of the borough, or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

[The alteration of nomination paper after delivery to the town clerk, where the proposer was not an enrolled burgess, by the substitution of a proposer duly qualified. *Held*, in the absence of the seconder and assenting burgesses, to invalidate nomination though other formalities complied with. *Harmon v. Park* (L. R., Q. B. Div. 7, p. 369)].

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

[At a municipal election there were four vacancies to be filled, a burgess subscribed four nomination papers, which were delivered within due time, and subsequently he subscribed a fifth nomination paper which was also delivered in due time. In each case he subscribed as one of the eight assenting burgesses required by the Act (Municipal Elections Act, 1875, 38 & 39 Vict. c. 40, s. 1. sub-sec. 2). *Held*, that the first four nomination papers were valid, and that the fifth was invalid. *Burgoyne v. Collins* (L. R., 8 Q. B. D., p. 450)].

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

[The words "any person entitled to vote" in 22 Vict. c. 35. s. 6, which provided that at any election of councillors to be held for any borough or ward any person may nominate for the office of councillor himself (if duly qualified), or any other person or persons so qualified (not exceeding the number of persons to be elected for the borough or ward as the case may be), &c., required that at the election of councillors for a ward the person nominating should be on the list of voters for the ward. *Reg. v. Parkinson* (37 L. J. R., N. S., Q. B., 52)].

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

[In a nomination paper at an election for town councillors of a borough under the Municipal Elections Act, 1875, the name of a candidate which was Robert Vicars Mather was inserted thus "Robert V. Mather":—*Held*, not such a statement of "the surname and other names of the person nominated" as to satisfy the requirement of s. 1. of the Act and the form given in the 2nd schedule; and that the inaccuracy was not cured by s. 142 of 6 & 7 Will. 4, c. 76. *Mather v. Brown* (L. R., C. P. D., vol. 1., p. 599)].

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least before * the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

[Under the Municipal Elections Act, 1875 (38 & 39 Vict. c. 40. s. 1, sub-s. 3), the nomination paper must be delivered to the town clerk by the candidate himself

* The latest day before the annual election would be October 24th, subject to the provisions of section 230 as to Sundays and Fastdays.

*Election of
Councillors.*

or by his proposer or seconder personally, and not by an agent. And the objection is one which is cognisable by the mayor, whose decision allowing it may be questioned on a petition against the return of the successful candidate. *Monks v. Jackson* (L. R., C. P. D., vol. 1, p. 683)].

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

9. The mayor shall attend at the town hall on the day next * after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

[Where a town clerk issued notice in the prescribed form but erroneously stating the last day for the delivery of nomination papers. *Held*, that the notice being calculated in the opinion of the court to mislead the candidates, and so prevent a fair election, the whole proceeding must be declared void and a new election ordered. *Howes v. Turner* (L. R., C. P. D., 1, p. 670). Northampton borough.]

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

[S. was nominated a candidate for the office of councillor in the borough of B., in his nomination paper his seconder was described as of H. Street. The situation of the property of the seconder was described on the burgess roll as being in W. Street. The street was generally known as H. Street, and its name had only been recently changed to W. Street; no one had been or could be misled by the description thereof as H. Street. The mayor of B. having declared the nomination paper to be void on the ground that the seconder of S. had improperly described the situation of the property in respect of which he was enrolled on the burgess roll:—*Held*, that the situation of the property of the seconder was sufficiently described, and that the decision of the mayor was wrong. *Soper v. Mayor of Basingstoke* (L. R., C. P. D., vol. 2, p. 440)].

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

[A candidate at a municipal election under the Ballot Act, 1872 (35 & 36 Vict. c. 33), has a right as such candidate to be present in the polling stations during the polling, although he does not either himself undertake the duties of an agent or assist his agent in the performance of such duties; and therefore the presiding officer at the election has no authority to exclude such candidate therefrom if he does not interfere with the polling or in any other way misconduct himself. *Clementson v. Mason* (L. R., C. P. D., vol. 10, p. 209)].

13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to a reversal on petition questioning the election or return.

[The duty here devolving on the mayor is one which the very wording of the rule implies is to be discharged with every care and consideration].

* That is to say—for an annual election—on October the 25th.

15. The town clerk shall at least four days before * the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconder, to be printed and fixed on the town hall, and in the case of a ward election, in some conspicuous place in the ward. *Election of Councillors.*

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day of delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

[The intention of this rule is clear. Any candidate or candidates who may desire, from whatever cause, to save the borough the expense, labour, and turmoil of a contested election have provided here a method for giving effect to their wishes].

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the ~~burgess roll or ward roll~~ which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

[See section 45 *ante* (page 59) for reference to the case of *Budge v. Andrews*. It will be useful to also here notice the case of *Gothard and others* (petitioners) v. *Clarke and others* (respondents), (argued in C. P. Div., H. C. J., before J.J. Grove and Lopes). It appeared that the petitioners were candidates for the office of councillor for the Heaton Norris ward of the borough of Stockport. Messrs. Clarke, Hunt and Livesley, the respondents, were also candidates, and they were declared to be duly elected. The nomination papers of the petitioners were delivered to the town clerk. In the case of each of the petitioners, George Chapman was the seconder of the nomination. His number on the burgess roll was given in the nomination paper as 695. It was objected that the number 695 on the ward list did not represent George Chapman, and that, as the burgess number given in the nomination paper was wrong, the nomination was insufficient and the description misleading. The number 695 was the number of George Chapman shown in certain uncorrected proofs of the burgess roll which had been supplied by a clerk in the town clerk's office to the agents of the two political parties in the borough. In this proof certain numbers had, by a clerical error, been inserted twice over. When the error was discovered, it was corrected by the town clerk. The effect of this correction was that in the burgess roll, as completed on the 22nd of October, Mr. Chapman's number was 704 instead of 695. The mayor allowed the objection, and declared the respondents duly elected. Mr. Chapman was a justice of the peace for the borough, held certain offices and was well known in the borough, and no person was or could be misled in any way by the alleged inaccuracy in the nomination papers, nor was there nor could there be any doubt as to the identity of George Chapman. The petitioners submitted that the alleged inaccuracy was immaterial, and that the mayor ought to have disallowed the objection to the nomination papers. The question for the court was whether the mayor's decision was right. Mr. Justice Grove: The question depends mainly on the construction which is to be placed on the schedule in 38 & 39 Vict. c. 40 (the Municipal Elections Act, 1875). Previous to the passing of that Act it was not necessary to give in the nomination paper the register numbers of the nominators. The form of nomination paper prescribed by the 38 & 39 Vict. c. 40 contains

* The 27th of October in the case of an annual election.

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a note, "the number on the burgess roll of the burgess subscribing, with the valuation of the property in respect of which he is enrolled on the burgess roll." As to the meaning of this note there could be no doubt. The question is, whether it is imperative or directory only. I see no reason why it should be held to be merely directory; and if it were so held, it would inevitably lead to irregularity, and thus give rise to inconvenience. The provision was a new one, and there seemed to be good and sufficient reason for it, the object clearly being to enable persons who took an interest in the election to ascertain, by an inspection of the burgess roll, who were the persons proposing, seconding, and assenting to the nomination of the candidates. It was a simple and useful provision, and ought not to be ignored. It would lead to great carelessness if it were decided in a court of law that any number could be placed against the names of the burgesses, subject to a power of correction in the mayor. Moreover, that power could not be exercised by the mayor until the object of the statute had been completely frustrated, that object being that, before the election, persons should see whether the candidate was properly proposed, seconded, and assented to by enrolled burgesses. The consequence of omitting or mis-stating the number on the register might be very serious. Suppose, for example, we said, as we are asked to say, the number here is immaterial, because it has not misled any one. If such a contention were allowed, it would become necessary for the mayor, in similar cases, to hold an inquiry in order to discover whether anybody had been misled—an inquiry which would be the reverse of beneficial; and if the mayor was thought to be a partisan his decision would be cavilled at. The effect would be to give the mayor much trouble, protract the time of the election, and depart from the terms of the Act, and change a simple and sensible provision for a complex and difficult inquiry. It was argued, on behalf of the petitioners, that the words "to the like effect" would have been omitted from section 1, subsection 2, of the Act, if the subsection was intended to be obligatory. But the words in the note to the schedule are plain: "the number on the burgess roll of the burgess subscribing." The words are used in their ordinary sense. The numbers are not given here—704 is not 695. If this wrong number did not mislead in this particular case, it might have done so; and I am of opinion that the provisions of the Act were not properly complied with. Sec. 13 of the Act of 1872 remains to be noticed. It enacts that no election shall be declared invalid "by reason of non-compliance with the rules, or mistakes in the use of the forms." I do not see how we can apply this section in the present case. We are not declaring the election invalid, and the mayor could not declare the election invalid before it was completed. It was argued that the word "election" was used for the process of the election, as well as the completion. In the 13th section "election" must be held to mean the consummation of the election. No election in the present case can be declared invalid, because there is no election to declare invalid. We must therefore give judgment for the respondents with costs. Mr. Justice Lopes concurred. (L. R., C. P. D., vol. 5, p. 253)].

Relation of nomination to election.

56.—(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected. *Election of Councillors,*

[The effect of section 8 of 22 Vict. c. 35 (1859), and section 1 of 38 & 39 Vict. c. 40, is preserved in this clause. Where the mayor of a borough has, under section 1, subsection 3, 38 & 39 Vict. c. 40, improperly allowed an objection to a nomination paper, the court has jurisdiction under 35 & 36 Vict. c. 60, s. 12, to entertain a case questioning the validity of the election. *Budge v. Andrews* (3 C. P. D., 510)].

57.—If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election. *Publication of uncontested election.*

[The effect of section 8 of 22 Vict. c. 35 (1859) is preserved in this clause].

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872,* *Mode of conducting poll at contested election.*

* Section 20 of the Act referred to contains the directions as follows:—"The poll at every contested municipal election shall, so far as circumstances admit, be conducted in the manner in which the poll is by this Act directed to be conducted at a contested parliamentary election, and, subject to the modifications expressed in the schedules annexed hereto, such provisions of this Act and of the said schedules as relate to or are concerned with a poll at a parliamentary election, shall apply to a poll at a contested municipal election: Provided as follows:

- (1.) The term 'returning officer' shall mean the mayor or other officer who, under the law relating to municipal elections, presides at such elections;
- (2.) The term 'petition questioning the election or return' shall mean any proceeding in which a municipal election can be questioned;
- (3.) The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll;
- (4.) All expenses shall be defrayed in manner provided by law with respect to the expenses of a municipal election;
- (5.) No return shall be made to the Clerk of the Crown in Chancery;
- (6.) Nothing in this Act shall be deemed to authorize the appointment of any agents of a candidate in a municipal election, but if in the case of a municipal election any agent of a candidate is appointed, and a notice in writing of such appointment is given to the returning officer, the provisions of this Act with respect to agents of candidates shall, so far as respects such agent, apply in the case of that election;
- (7.) The provisions of this Act with respect to—
 - (a.) The voting of a returning officer; and
 - (b.) The use of a room for taking a poll; and
 - (c.) The right to vote of persons whose names are on the register of voters;
 shall not apply in the case of a municipal election.

A municipal election shall, except in so far as relates to the taking of the poll in the event of its being contested, be conducted in the manner in which it would have been conducted if this Act had not passed."

Rule 61 for Municipal Elections, contained in Part II. of the First Schedule of the Act, may be also usefully quoted here:—"In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

- (a.) The expression 'register of voters' means the Burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station;
- (b.) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of Part I. of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

*Election of
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directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll)* shall apply to a poll at an election of councillors.

[The modifications of the Ballot Act in its application to municipal elections referred to above are contained in Part III. of the Third Schedule, as follows :—

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer,† the use of a room for taking a poll,‡ and the right to vote of persons whose names are on the register of voters§, and Rules 16 and 19|| in the schedule to that Act, shall not apply in the case of a municipal election.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the descriptions of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided.

6. No return shall be made to the Clerk of the Crown in Chancery].

[It has been held that although a (parliamentary or) municipal election will be void by the common law of Parliament, if it be so conducted that either there be no such election by the constituency at all, or it be not really conducted under the subsisting election law, which is now an election by ballot; yet if there be no reasonable ground to believe that a majority of the electors may

(a.) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's superior courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(b.) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough.

(c.) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election."

* Rules 31 to 38, Part I. of the First Schedule to the Act prescribe these duties.

† Section 2

‡ Sections 6, 16 & 17 } of 35 & 36 Vict. c. 33.

§ Section 7

|| These two rules are as follows :—"16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.—19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote."

have been prevented from voting in favour of the candidate they preferred, and if the election be substantially an election by ballot, the election will not be void by the common law of Parliament, notwithstanding there may have been some mistake or misconduct in the use of the machinery in the Ballot Act. (This case, it may be remarked, also decides a number of points of some interest under the Ballot Act, equally applicable to parliamentary and municipal elections, with respect to the marking of papers, voter's signature, &c.)—*Woodward v. Sarsons* (44 L. J. R., N. S., C. P., 293)].

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day.*

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

[Amendments have been made in the drafting of this subsection to meet omitted cases, and give effect to the obvious intention of the Legislature].

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorize the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, † shall, as far as regards that agent, apply in the case of that election.

[The effect of sections 32 and 35 of the Act of 1835, section 18 of 7 Will. 4 and 1 Vict. c. 78 (1837), and section 20 (particularly) of 35 & 36 Vict. c. 33 (which Act is referred to generally), is preserved in this clause].

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his Questions which may be put to voters.

* Public notice of the result is to be given by the returning officer as soon as possible.—*Rule 44, Part I., First Schedule of Ballot Act, 1872.*

† See particularly hereon Rules 51 to 55 of Part I. of the First Schedule of the Ballot Act, 1872.

*Election of
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agent, put to any person offering to vote, at the time of presenting himself to vote, but not afterwards, the following questions, or either of them :—

- (a.) Are you the person enrolled in the burgess [or ward] roll now in force for this borough [or ward] as follows [read the whole entry from the roll] ?
- (b.) Have you already voted at the present election [add, in case of an election for several wards, in this or any other ward] ?
- (2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.
- (3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.
- (4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

[The effect of section 34 of the Act of 1835 is preserved in this clause. It is perhaps worth while observing that the strict prohibition against putting any but the three questions given above prevents any inquiry into a voter's change or loss of qualification. Once on the burgess roll a person is entitled to vote during the year in which that roll is in force, whether he does or does not possess the same or any qualification. "Where the majority of electors vote for a disqualified person in ignorance of the fact of disqualification, the election may be void or voidable, or, in the latter case, may be capable of being made good, according to the nature of the disqualification. The objection may require ulterior proceedings to be taken before some competent tribunal in order to be made available, or it may be such as to place the elected candidate on the same footing as if he had never existed, and the votes for him were a nullity; but in no such case are the electors who vote for him deprived of their votes, if the fact becomes known and is declared while the election is still incomplete; they may then instantly proceed to vote for another candidate. If it be disclosed afterwards, the party elected may be ousted and the election declared void, but the candidate in the minority will not be deemed *ipso facto* elected. But when an elector before voting receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken as voluntarily abstaining from exercising his franchise, and as violating his duty of assisting at the election" *].

*Election of
Aldermen.**Election of Aldermen.*

Time and mode
of election of
aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the 9th of November, and the election shall be held at the quarterly meeting of the council.

(2.) The election shall be held immediately after the election of the mayor, or, if there is a sheriff, the appointment of the sheriff.

(3.) An outgoing alderman, although mayor elect, shall not vote.

* See "Grant on Corporations," page 399.

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes. *Election of Aldermen.*

[In a case decided in Feb., 1861, the initial "W" instead of "William," was held to be a misnomer cured by s. 142 of 5 & 6 Will. 4, c. 76. It was decided as not necessary that the Christian name should be written at full length; but if such a contraction as is ordinarily used for the Christian name be written, and intended to designate such, it would be sufficient.—*Reg. v. Bradley* (30 L. J., Q. B., 180.) In a nomination paper at an election for town councillors of a borough under the Municipal Elections Act, 1875, the name of a candidate which was Robert Vicars Mather was inserted thus—"Robert V. Mather": *Held*, not such a statement of "the surname and other names of the persons nominated" as to satisfy the requirements of section 1 of the Act, and the form given in the Second Schedule, and that the inaccuracy was not cured by section 142 of 6 & 7 Will. 4, c. 76. The Municipal Elections Act, 1875, incorporated the former Act in these words, "This Act shall so far as is consistent with the tenor thereof, be construed as one with the Act 5 & 6 Will. 4, c. 76, and the Acts amending the same." It does not say that the provision in s. 142 of the former Act shall be extended to the latter Act, but merely that it shall be construed as one with it. These terms were held not to extend the operation of the amending section in the earlier Act to a document which had no existence then and therefore could not have been in contemplation of the Legislature. *Regina v. Bradley* and *Regina v. Plenty* (L. R., Q. B., 4. 347) (1869), cited and overruled by *Mather v. Brown* (1 C. P. D., 596) (1876)].

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

[The effect of section 25 of the Act of 1835, section 14 of 7 Will. 4 and 1 Vict. c. 78 (1837) and section 13 of 16 & 17 Vict. c. 79 (1853), is preserved in this clause].

Election of Mayor.

61.—(1.) The ordinary day of election of mayor* shall be the ninth of November.

Election of Mayor.

Time and mode of election of mayor.

* The very generally used designation of "*Ex-mayor*," is almost universally supposed to be confined to the immediate past mayor, but it would be difficult to logically dispute the claim of any person, who has held the office of mayor, to the title, as the following quotation from Littré will show:—*Ex* : Particule qui se joint par le trait d'union à certains mots pour exprimer l'état ou la position antérieure d'une personne : un ex-ministre, un ex-député. Etym. : Lat. : *ex* ; Grec : *ἐξ*, hors. The fact that the term "*ex mayor*" is nowhere used in this Act would also seem to bear out the foregoing conclusion.

Election of Mayor.

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman.

(4.) In case of equality of votes, the chairman although not entitled to vote in the first instance, shall have the casting vote.

[The effect of sections 49 and 69 of the Act of 1835 is preserved in this clause. Subsection 4 prevents any chairman ensuring his own election as mayor by producing an equality of votes by voting in the first instance and then giving a casting vote. His vote can only be given when the council exclusive of himself are equally divided. It is almost needless to observe that the rule of "government (or decision) by majority" of necessity prevails in this case].

Election of Auditors and Assessors.

Time and mode of election of auditors and assessors.

Election of Auditors and Assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.

(2.) The ordinary day of election of revising assessors shall be the first of March.

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(4.) An elector shall not vote for more than one person to be elective auditor or revising assessor.

(5.) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.

(6.) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors.

[The effect of section 37 of the Act of 1835, section 4 of 7 Will. 4 and 1 Vict. c. 78 (1837), section 6 of 38 & 39 Vict. c. 40 (1875), and section 1 of 40 & 41 Vict. c. 66 (1877), is preserved in this clause].

*Supplemental and Exceptional Provisions.**Supplemental and Exceptional Provisions.*

Right of women to vote.

63.—For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

[The effect of section 9 of 32 & 33 Vict. c. 55 is preserved in this clause. The 32 & 33 Vict. c. 55, s. 9, which enacts that, in the Municipal Corporations Act, words importing the masculine gender shall include females for all purposes connected with the right to vote at the election of councillors, auditors, and assessors, has reference only to the disability of women by reason of sex, and has no reference to the disability by reason of the status of coverture. And the Married Women's Property Act (33 & 34 Vict. c. 93) has no reference to the political disabilities of married women :—*Held* therefore (on a rule for a *quo warranto* against a town councillor who had been elected by a majority of one), that a married woman, though qualified by occupation and payment of rates, and put on the burgess list, cannot vote at the election of town councillors.]

Seem, that a woman, who is rightly on the burgess list, but married before the election, is also disqualified from voting.—*Reg. v. Harrold* (L. R., C. P., v. 7, p. 361)].

64.—The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, as far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

Polling districts.

[The effect of section 10 of 38 & 39 Vict. c. 40 is preserved in this clause].

65.—Any notice required to be given in connection with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

Notices as to elections.

[The effect of section 8 of 38 & 39 Vict. c. 40 is preserved in this clause].

66.—(1.) On a casual vacancy* in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

Time for filling casual vacancies.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

[The effect of sections 27, 47, and 49 of the Act of 1835, sections 9 and 11 of 16 & 17 Vict. c. 79 (1853), and section 9 of 38 & 39 Vict. c. 40 (1875), is preserved in this clause].

* It has been held that an election taken to fill ordinary and extraordinary vacancies both together is wholly bad. In case, therefore, an election to supply an extraordinary vacancy takes place on the day of an ordinary election (that is, on the first of November), care must be taken that in the notice of the election, as well as in all other subsequent proceedings, a distinction is preserved between the two classes of candidates and the two descriptions of vacancies, so that it may distinctly appear who is to fill the extraordinary vacancy, and who the ordinary.

*Supplemental
and Excep-
tional Provi-
sions.*

Illness, &c. of
mayor or
returning
officer.

67.—(1.) If the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor.

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

[The effect of section 36 of the Act of 1835, section 16 of 7 Will. 4 and 1 Vict. c. 78 (1837), and section 10 of 16 & 17 Vict. c. 79 (1853), is preserved in this clause].

Election of
councillor in
more than one
ward.

68.—If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

[The effect of section 46 of the Act of 1835 is preserved in this clause].

Elections not in
churches.

69.—A municipal election shall not be held in any church, chapel, or other place of public worship.

[The effect of section 33 of the Act of 1835 is preserved in this clause].

Omission to
hold election,
or election void.

70.—(1.) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2.) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court.

(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

[The effect of sections 25 and 26 of 7 Will. 4 and 1 Vict. c. 78 (1837) particularly, and 11 Geo. 1, c. 4 (1723), which is reproduced to the extent of its repeal by this Act, is preserved in this clause].

Supplemental and Exceptional Provisions.

71.—(1.) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

Burgess roll to be in operation until revision of new burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

[The effect of section 6 of 7 Will. 4 and 1 Vict. c. 78 (1837), and section 6 of 20 & 21 Vict. c. 50 (1857), is preserved in this clause].

72.—An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

Non-compliance with rules.

[The effect of section 13* of 35 & 36 Vict. c. 33 (1872), and section 41 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause].

73.—Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election.

Election valid unless questioned within twelve months.

[The effect of section 1 of 6 & 7 Vict. c. 89 (1843) is preserved in this clause. By section 23, 7 Will. 4 and 1 Vict. c. 78, "every application to court for a *quo warranto* as to a corporate office must be made before the end of twelve calendar months after the election, or the time when the person shall have become disqualified." This statute of limitations was passed to quiet possession; but the party may still run the risk of penalties, if he acts while disqualified. —Blackburn, J. *Ex parte Birkbeck* (L.R., Q. B. 9, p. 257)].

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable

Offences in relation to nomination papers.

* This section (of the Ballot Act) is as follows:—"No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election."

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and Excep-
tional Provi-
sions.*

to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

[The effect of section 3* of 35 & 36 Vict. c. 33 (1872), and section 1 of 38 & 39 Vict. c. 40, is preserved in this clause].

*Offences in
relation to lists
and elections.*

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

[A notice of objection, under 5 & 6 Will. 4, c. 76, s. 17 and sch. D. 3, to a person on the burgess list of a borough need not specify the parish in which the objector's qualifying property is situate; nor the nature of the property in respect of which the person objected to is rated. The mayor and assessors of a borough, at a court for the revision of the burgess list, holden between the 1st and 15th of October, the time limited by s. 18, erroneously determined that certain notices of objection here invalid, and refused to inquire into the qualifications of the persons objected to.—*Held*, that the mayor and assessors had declined jurisdiction; and the court granted a mandamus commanding them to hold a court to revise the list, although the time limited had elapsed. *Reg. v. Mayor of Monmouth* (L.R., Q.B. 6, p. 251). A mandamus was directed to the mayor and assessors of a borough within 5 & 6 Will. 4, c. 76, comprising several parishes. It contained suggestions that at the court holden in October, 1856, before the mayor and assessors for the revision of the burgess lists of that year, the mayor and assessors refused for insufficient reasons to revise the lists. Mandatory part commanding the mayor and assessors to hold a court and revise the list for the parish. The writ was tested in January, 1857. The Court of Queen's Bench having awarded a peremptory mandamus,—*Held*, on error, that the mandamus was properly directed to the existing mayor and assessor to hold the court and revise the list of the past year.—*Rochester (Mayor, &c.) v. Reg. (in error)*. (El. Bl. and El., 1024)].

* This section (of the Ballot Act) is as follows :—

“Every person who—

- (1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or
- (2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (3.) Without due authority supplies any ballot paper to any person; or
- (4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or
- (5.) Fraudulently takes out of the polling station any ballot paper; or
- (6.) Without due authority, destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanour, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments, may be stated to be in the returning officer at such election, as well as the property in the counterfoils.”

(2.) If—

(a.) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act; or

(b.) A town clerk neglects or refuses to receive, print and publish, a parish burgess list or list of claimants or respondents, as required by this Act; or

(c.) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action.

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

[The effect of section 48 of the Act of 1835 is preserved in this clause].

76.—(1.) If the Ballot Act, 1872,* ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872,† to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

Supplemental and Exceptional Provisions.

Revival of former law on expiration of Ballot Act.

[The enactments which are to revive on the expiration of the Ballot Act, are contained in Part IV. of the Third Schedule, as follows:—

“With respect to a contested election of councillors, elective auditors, or revising assessors, the following rules shall be observed :

1. The returning officer shall cause the requisite polling booths to be erected, or the requisite rooms to be hired and used as polling booths.

2. The returning officer shall, at least two days before the day of election, give public notice of the situation, division, and allotment of the different booths.

3. Each booth shall be divided into compartments, and the returning officer shall appoint a clerk to take the poll at each compartment.

4. There shall be affixed on each booth a notice specifying the part of the borough for which it is allotted.

5. No person shall be admitted to vote at any booth except that allotted for the part in which his qualifying property is situate, unless no booth is allotted for that part, in which case he may vote at any booth.

6. If there is more than one booth, the returning officer may appoint a deputy to preside at each booth.

7. A burgess may vote by delivering to the returning officer or his deputy a voting paper containing the surnames and other names of the persons for

* The Ballot Act, 1872, amended as regards municipal election by Municipal Elections Act, 1875 is continued in force by the Expiring Laws Continuance Act, 1882.

† See page 69 and 70 *ante*, for sections and rules referring thereto.

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sions.*

whom he votes, with their abodes and descriptions. The voting paper must be signed by the burgess, and must state the qualifying property in respect of which he votes.

[The case of *Reg. v. Tart* (1 El. and El., 618), although decided with reference to the election of a councillor under section 32 of the Act of 1835, has a bearing upon this subsection. It was thereon held that in order to satisfy the section the name of the burgess voting must so appear upon the face of the voting paper as to show clearly that the name is intended as a signature, and also that the same must be connected with the street, &c., in which the property is situate].

8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of his delivering in his voting paper, but not afterwards, the following question :

‘Are you the person whose name is signed as [A.B.] to the voting paper now delivered in by you?’

The vote of a person required to answer this question shall not be received until he has answered it. If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

9. The returning officer shall, at the close of the poll, examine the voting papers, and shall publish a list of the persons elected not later than two o’clock in the afternoon of the day next but one after the day of election.

[No publication can be made after two o’clock under any circumstances. It would, if actually made, be a mere nullity.]

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search ”].

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

[The effect of section 15 of 38 & 39 Vict. c. 40 is preserved in this clause. The Ballot Act, 1872, by implication, imposes a duty *prima facie* on the presiding officer at a polling station during an election to deliver to the voters voting papers bearing the official mark appointed under the Act for the election, and to be present during such election at the polling station, so that the voters before depositing their voting papers in the ballot-box, can show to him the official mark on the back of such papers in accordance with the statute. For breach of these duties, being merely ministerial, an action will lie by a party aggrieved, *e.g.* who has thereby lost the election through votes given to him being void for want of the official mark, without malice or want of reasonable care on the part of the defendant.

If a clerk be appointed by the returning officer to assist at the polling station, the presiding officer may by the Act, depute to such clerk, so much of his duties as he thinks fit, with certain specified exceptions. For the acts of commission or omission of the clerk in the performance of the duties so delegated, the presiding officer will not be responsible, inasmuch as he does not appoint the clerk, and the relation of master and servant does not exist between them. *Per* Bovill, C.J. and Grove, J. The Act does not impose on the presiding officer the duty of ascertaining before the voter deposits a voting paper in the ballot box, whether the official mark is on such paper. *Per* Keating and Brett, JJ. : The statute does impose such duty on the presiding officer. *Pickering v. James* (L. R., C. P. 8, p. 489)].

PART IV.

CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

77.—In this part—

“Bribery,” “treating,” “undue influence” and “personation,” include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act* for the time being in force with respect to parliamentary elections:

[By 17 & 18 Vict. c. 102, s. 2, and 22 Vict. c. 35, s. 12, every person shall be deemed guilty of “bribery” who shall . . . offer, promise, or promise to procure, to endeavour to procure, any money or valuable consideration to or for any voter . . . to induce him to vote . . . at any parliamentary or municipal election.

The defendant, soliciting the vote of a voter, said “he should be remunerated for any loss of time.”—*Held*, that this was an offer or promise within the sections.—*Simpson v. Yeend* (L. R., Q. B. 4, p. 626.)].

“Corrupt practice” means bribery, treating, undue influence, or personation

[This definition of “corrupt practice” confirms decision in *Hargreaves v. Simpson* (L. R., 4 Q. B. D., p. 403), in which it was held: “By the Corrupt Practices (Municipal Elections) Act, 1872, the provisions of 17 & 18 Vict. c. 102, s. 23, by which giving refreshments to voters at parliamentary elections is made illegal under a penalty of forty shillings, are rendered applicable in the case of municipal elections].

“Candidate” means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

* The Acts at present in force are:—

The 17 & 18 Vict. c. 102.

The 21 & 22 Vict. c. 87.

The 26 & 27 Vict. c. 29.

The 35 & 36 Vict. c. 33 (Ballot Act) is confined to sec. 29.—(Councillors, auditors and assessors).

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“Canvasser” means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal election, or to vote or to abstain from voting for a candidate at a municipal election :

“Voter” means a burgess or a person who votes or claims to vote at a municipal election :

“Election court” means a court constituted under this Part for the trial of an election petition :

“Municipal election petition” or “election petition” means a petition under this Part complaining of an undue municipal election :

“Parliamentary election petition” means a petition under the Parliamentary Elections Act, 1868* :

“Prescribed” means prescribed by general rules made under this Part :

“Borough” and “election” when used with reference to a petition mean the borough and election to which the petition relates.

[The effect of sections 2, 3 and 13 of 41 & 42 Vict. c. 26 (1878) is preserved in this clause].

General
penalties
for corrupt
practices.

78.—A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures and punishments as if the corrupt practice had been committed at a parliamentary election.

[The effect of section 3 of 41 & 42 Vict. c. 26 is preserved in this clause.

It has been held that a person convicted of bribery at a municipal election, and fined 40s. in a county court for that offence under the 22 & 23 Vict. c. 35, s. 11, is not disqualified under that section from serving a municipal office.—*Wray, in re* (13 W. R. 633.)—*Held*, by Cockburn, C.J., disabling clause of 17 & 18 Vict. c. 102, s. 6, limited to parliamentary elections. This clause assimilates municipal and parliamentary penalties.

Each separate act of bribery is a separate offence. Where a person has been guilty of several acts of bribery at a municipal election, he is liable to a penalty in respect of each such act of bribery. *Kiddernminster case*.—*Milner v. Bale* (L. R., C. P., vol. 10, p. 591).

School Board elections do not come within provisions of this clause. *Re West Bromwich School Board* (5 C. P. D., 191.)

Disqualifi-
cations and
avoidance of
election for
corrupt
practices by
candidates.

79.—(1.) Where it is found by the report of an election court that a corrupt practice has been committed by or with the knowledge and consent of a candidate at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void ; and he shall (whether elected or

* The 31 & 32 Vict. c. 125.

not) during seven years from the date of the report be subject to the following disqualifications :

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[The 31 & 32 Vict. c. 125, ss. 43-45 (1868), 35 & 36 Vict. c. 60, s. 4 (1872), contains provisions similar to those in the foregoing subsection].

He shall be incapable of—

- (a.) Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a burgess :
- (b.) Acting as a justice or holding any judicial office :
- (c.) Being elected to or sitting or voting in Parliament :
- (d.) Being registered or voting as a parliamentary voter :

[Disqualification from being registered as a voter, by reason of personal bribery, or bribery by an agent with knowledge and consent of candidate necessitates a finding by the report of the election judge under 31 & 32 Vict. c. 125, s. 11, subsec. 14, that he has been so guilty. Inference from facts stated in judge's report not sufficient.—*Grant v. Overseers of Pagham* (3 C. P. D. 80.).]

(e.) Being employed by a candidate in a parliamentary or municipal election :

(f.) Acting as overseer or as guardian of the poor :

[See 33 & 34 Vict. c. 23, s. 2, whereby persons convicted of treason or felony are incapable of exercising any municipal franchise until they have suffered punishment or been pardoned].

(2.) If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged* to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

(3.) If after a person has become disqualified under this Part any witness on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may, on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.

[The effect of section 4 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

80.—If it is found by an election court that a candidate has by an agent been guilty of a corrupt practice at a municipal election, or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate with the candidate's knowledge and consent, the

Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part.

* A mere verdict insufficient. Though there is a distinction in criminal cases between the conviction and attainder, yet there is no such distinction in civil cases between verdict and judgment, so that as any effect can follow from a naked verdict. In a civil action no penalty takes place till judgment be given on the verdict.—*Sutton v. Bishop* (1 Wm. Bl. 666.)

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Practices.*

candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any corporate office in the borough, and if he was elected his election shall be void.

[The effect of section 5 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

Avoidance of
election for
general
corruption.

81.—A municipal election shall be wholly avoided by such general corruption, bribery, treating or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

[The effect of section 6 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

Paid agents
and can-
vassers.

82.—(1.) A burgess of a borough shall not be retained or employed for payment or reward by or on behalf of a candidate at a municipal election for that borough or any ward thereof as a canvasser for the purposes of the election.

[These words "or any ward thereof" settles the question whether a burgess on the register for one ward can be a paid canvasser for a candidate for the office of councillor in another ward. *Maudé v. Lowley* (L.R., 9 C.P. 165)].

(2.) If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

[Both candidate and burgess alike guilty].

(3.) An agent or canvasser retained or employed for payment or reward for any of the purposes of a municipal election, shall not vote at the election, and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

[The effect of section 7 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause. By this last subsection (3), If in addition to acting as agent or canvasser, burgess votes for candidate employing him, he is separately liable to additional fine. In parliamentary elections electors may be employed as paid canvassers, but if so employed they cannot vote. See also the 30 & 31 Vict. c. 102, s. 11 (1867), and 35 & 36 Vict. c. 33, s. 25 (1872)].

Payment
for conveyance
of voters.

83.—If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds.

[The effect of section 8 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause. The 21 & 22 Vict. c. 87, s. 1 (1858), 30 & 31 Vict. c. 102, s. 36 (1867), and 43 Vict. c. 18, s. 2 (1879), regulate the conveyance of voters at parliamentary elections].

84.—(1.) The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence, or personation at a municipal election, with compensation for trouble and loss of time, shall, unless the court otherwise directs, be allowed, paid, and borne as in cases of felony.

[Section 113 of the Act of 1835 prescribes the manner in which cost and expenses are to be provided].

(2.) The clerk of the peace of the borough, or, if there is none, of the county in which the borough is situate, shall, if so directed by an election court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Part at the election.

[The effect of section 9 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

85.—The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

[The effect of section 10 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

86.—The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation* at a parliamentary election shall apply in the case of a municipal election.

[The effect of section 11 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

Election Petitions.

87.—(1.) A municipal election may be questioned by an election petition on the ground—

- (a.) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or
- (b.) That the election was avoided by corrupt practices or offences against this Part committed at the election; or
- (c.) That the person whose election is questioned was at the time of the election disqualified; or

[Disqualification may result from improper nomination, *Howes v. Turner* (1 C. P. D. 670), and also on the ground that another candidate was wrongly rejected. *Budge v. Andrews* (3 C. P. D., 510)].

* See 35 & 36 Vict. c. 33. It has been held under section 9 of 22 Vict. c. 35 that at an election of town councillors the offence of "personation" is complete when a person not the voter hands in a nomination paper to the polling officer; and it is immaterial that he does not persist, but answers "no" when questioned whether he is the voter. A conviction under the section, that the defendant "induced J. F. to personate" a voter is good, without setting out the means of inducement.—*Reg v. Hague* (33 L. J., M. C. 81).

Corrupt Practices.

Prosecutions for corrupt practices.

Striking off votes.

Personation.

Election Petitions.

Power to question municipal election by petition.

*Election
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(1.) That he was not duly elected by a majority of lawful votes.

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition.

[The effect of section 12 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause. See Rule 7, Additional General Rules, January, 1875. See also *Reg. v. Mayor of Welshpool* (35 L. T. N. S. 594).

*Presentation
of petition.*

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.

[An unsuccessful candidate who does not claim to be elected cannot be made a respondent against his will. *Lovering v. Dawson* (1 L. R., 10 C. P., 711).

The definition of a respondent is omitted in section 7 *ante*. See 35 & 36 Vict. c. 60, s. 13 for definition, which includes a person who claims to be elected, and acts as if he had been. *Yates v. Leach* (L. R., 9 C. P., 605)].

(3.) The petition shall be in the prescribed form* and shall be signed by the petitioner† and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

[The effect of section 13 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

[An order having been made by a judge at chambers under the 6th of the General Rules made under the Corrupt Practices (Municipal Elections) Act, 1872 for

* As to the form and delivery of particulars, refer to *Maude v. Lowley* (No. 1), 43 L. J. Rep. (N. S.) C. P., 103.

* See General Rules 2—6, 1872, Appendix.

† See 1, 7-9 R. 4, and General Rules, 1875.

the delivery of particulars by the petitioners to the respondent, stating by whom, when, and where persons alleged to have been bribed and treated had been so bribed and treated, and by whom, when, and where canvassers had been employed and moneys paid for the conveyance of voters to the poll, the order was allowed by the court, with the addition of the words, "so far as known." A petition against the election of a town councillor cannot, after the expiration of the twenty-one days limited by s. 13, subsection 2 for its presentation, be amended by the introduction of a substantially new charge. The petition as originally framed complained of the employment, contrary to the prohibition in s. 7 as to paid canvassers, at an election for the north ward of the borough, of persons who were on the register of burgesses for that ward. The petitioner after the expiration of the twenty-one days sought to amend the petition by adding "and other wards." *Held* that the court (or a judge) had no power to allow the proposed amendment. Leeds Borough, *Maudie* petitioner, *Lowley* respondent (L. R., C. P., v. 9, p. 165).

The High Court will not amend an election petition by striking out, after the lapse of time limited by the Act for presenting it, that part of the prayer of the petition which claims the seat for the petitioner (an unsuccessful candidate) and the allegations applying to a scrutiny which would be dependent thereon, inasmuch as this would affect the rights of the constituency. Practice of election committees in this respect followed. *Semble*, it is competent for the High Court to amend an election petition at any time by striking out allegations therein, where it is satisfied that no injurious result, or a beneficial one, will follow; or by adding matters discovered after the filing of the petition. *Aldridge v. Hurst* (L. R., C. P. D., vol. 1., p. 410).

See *Pickering v. Startin* (28 L. T., N. S., 111) petition in a municipal election allowed to be amended after twenty-one days by adding two paragraphs alleging:—1st. That the returning officer had neglected to insert in the counterfoils of 29 of the voting papers the number of the voters appearing on the burgess roll as directed by 35 & 36 Vict. c. 33 s. 2, and 2nd sch., that certain "tendered" ballot papers were used as ballot papers and put into the ballot box, and afterwards used in favour of the respondent].

89.—(1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a Judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money* or by recognisance† entered into by not more than four sureties, or partly in one way and partly in the other.

[In parliamentary election, one surety for whole amount held to be sufficient. —*Hereford Election Petition*, T.S. 1880].

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner‡ serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

* See General Rules, 16, 17.
† See General Rules, 12, 13.

‡ See General Rules, 18–20.

*Election
Petitions.*

[It is a condition precedent to the trial of a municipal election petition, that within five days after the presentation of it, the petitioner should, in the prescribed manner, serve on the respondent a notice of the presentation and of the nature of the proposed security, and a copy of the petition as required by 35 & 36 Vict. c. 60, s. 13, sub-s. 4.—*Williams v. Mayor of Tenby* (L.R., C.P.D., vol. 5, p. 135). If not served, the petition will be taken off the file].

(4.) Within five days * after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.†

[After the service of this notice, an affidavit of the time and manner of service must be filed with the Master].

(5.) An objection to a recognisance shall be decided in the prescribed manner.‡

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.§

[The effect of section 13 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

*Petition at
issue.*

90.—On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

[The effect of section 13 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause. As to amendment of objections, &c., see *Maule v. Lowley* (No. 2)].

*Municipal
election list.*

91.—(1.) The prescribed officer shall as soon as may be, make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.||

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

* See General Rules, 21, 22.

† See General Rules, 2.

‡ See General Rules, 23, 24.

§ See General Rules, 26.

|| See General Rules, 30.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent.

[That is when they have been elected.—*Loving v. Dawson* (1 L.R., 10 C.P., 711); or when they claim to have been elected.—*Yates v. Leach* (L.R., 9 C.P., 605)].

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

[The effect of section 13 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

92.—(1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions; and those judges or two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the election petitions at issue, and shall appoint that number accordingly as commissioners under this Part, and shall assign the petitions to be tried by each.

(5.) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

*Election
Petitions.*

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge* thereof, on such terms, if any, as the High Court or judge thinks fit.

[The effect of section 14 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

*Trial of
election
petition.*

93.—(1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.†

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

[The court declared an election void where the candidates had been misled as to the proper time for delivering nomination papers by the town clerk having made a mistake in the notice issued under 33 & 39 Vict. c. 40, sec. 1, sub-section 1.

The fact of the court being empowered to make their report does not warrant "that, without any act or consent on his part, and against his will, a man can be made a respondent, so that the petitioner may gain rights against him. The term respondent includes any one or more persons *against whose election* a petition is presented," *per* Coleridge, C.J. (*Lovering v. Dawson*, L. R., C. P., 10 p. 718.)]

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows :

* As to powers of election judge, see 31 & 32 Vict. c. 125, s. 29.

† See General Rules, 35, 36.

- (a.) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence ; *Election Petitions.*
- (b.) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part ;
- (c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.*

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial *at nisi prius*.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.†

* See General Rules, 37.

| † See General Rules, 8.

*Election
Petitions.*

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

[The effect of section 15 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

Witnesses.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury.

[Continues provisions of 26 & 27 Vict. c. 29, sec. 7 (1863) relating to examination and indemnity of witnesses].

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.*

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(5.) A witness on an election petition shall not be excused from answering any question relating to a corrupt practice or offence against this Part committed at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him; but if he answers it he shall be entitled to receive from the court a certificate stating that he was on his examination required by the court to answer

* See General Rules, 41.

questions the answers whereto criminated or tended to criminate him, and that he answered all such questions. *Election Petitions.*

(6.) If any information, indictment or action is at any time thereafter pending against the witness in any court for any corrupt practice or offence against this Part committed at or in relation to the election before the time of his giving his evidence, that court shall, on production and proof of the certificate, stay the proceedings, and may, in its discretion, award to him such costs as he has been put to therein.

(7.) The giving of or refusal to give any such certificate by the election court shall be final and conclusive.

[In *Reg. v. Price* (L. R., 6 Q. B., 411), it was held that if a witness had in point of fact answered all such questions, he was entitled to a certificate; and that if commissioners refused to grant a certificate to the witness on the ground that they were of opinion that he had not answered the questions, their decision was to be final and conclusive, but might be reviewed by mandamus. This case dissented from in *Reg. v. Hall and others*, in Court of Appeal (7 Q. B. D., p. 575). *Held*, where the commissioners appointed to inquire into corrupt practices at a parliamentary election have, with reference to a witness before them on such inquiry, exercised their judgment as to the right of such witnesses to receive their certificate under section 7 of the Corrupt Practices Prevention Act (26 & 27 Vic. c. 29), their decision refusing such certificate is conclusive and cannot be reviewed by mandamus].

(8.) A statement made by any person in answer to a question put to him by or before an election court shall not, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal.

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.*

[The effect of section 7† of 26 & 27 Vict. c. 29 (1863), and section 16 of 35 & 36 Vict. c. 60 (1872), is preserved in this clause].

* See Rule 5, Additional General Rules, Jan. 1875.

† This section is as follows:—"No person who is called as a witness before any election committee or any commissioners appointed in pursuance of the Act of the session holden in the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, shall be excused from answering any question relating to any corrupt practice at, or connected with any election forming the subject of inquiry by such committee or commissioners, on the ground that the answer thereto may criminate or tend to criminate himself: Provided always, that where any witness shall answer every question relating to the matters aforesaid which he shall be required by such committee or commissioners (as the case may be) to answer, and the answer to which may criminate, or tend to criminate him, he shall be entitled to receive from the committee under the hand of their clerk, or from the commissioners under their hand (as the case may be), a certificate stating that such witness was, upon his examination,

*Election
Petitions.*

Withdrawal
of petition.

95.—(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place.*

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.†

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.‡

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application

required by the said committee or commissioners to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or such question; and if any information, indictment, or action be at any time thereafter pending in any court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might be prosecuted or proceeded against under such Acts, committed by him previously to the time of his giving his evidence and at or in relation to the election concerning or in relation to which the witness may have been so examined, the court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action, and may, at his discretion, award to such witness such costs as he may have been put to in such information, indictment, or action: Provided that no statement made by any person in answer to any question put by or before such election committee or commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal."

* See General Rules, 45, 46.

† See General Rules, 47.

‡ See General Rules, 48

to withdraw a petition shall not be made except with the consent of all the petitioners. *Election Petitions.*

[The effect of section 17 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

96.—(1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.* *Abatement of petition.*

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

[The effect of section 17 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

97.—(1.) If before the trial of an election petition a respondent other than a returning officer— *Withdrawal and substitution of respondents.*

(a.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; † or

[If any of these events take place after notice of trial has been given, but before the trial has commenced, the Master is to countermand the notice of trial.—Rule 6, Additional General Rules, Jan. 1875].

(b.) Gives the prescribed notice that he does not intend to oppose the petition; ‡

[It has been held that this does not entitle him to have his name struck out of the petition, *Yates v. Leach* (L. R., 9 C. P., 605). As to the effect if all the respondents give this notice, see Rule 7, Additional General Rules, January, 1875].

the prescribed notice thereof shall be given in the borough, and within § the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be

* See General Rules, 50.

† See General Rules, 51.

‡ See General Rules, 52, 53.

§ See General Rules, 54.

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Petitions.*

admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

[The effect of section 18 of 35 & 36 Vict. c. 60 (1872) is preserved by this clause].

*Costs on
election
petitions.*

98.—(1.) All costs,* charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.

[To obtain the costs ordered by a commissioner to be paid under this Act, and to take proceedings under Rule 55, the order of the commissioner should first be made a rule of court. The entry of the order by the registrar is sufficient, and such order need not be endorsed on the petition by the commissioner. *Pare v. Hartshorn* (31 L. T., N. S., 486, S. C.). Determination of election court as to payments must be in writing and form part of the record, otherwise invalid. Election court for the trial of petitions under Municipal Elections Act, 1872, 35 & 36 Vict. c. 60, s. 22, a court of record. Where barrister appointed to try petition omitted to order the payment by the respondent of moneys advanced by commissioners under s. 22, limiting his order to expenses incurred by town clerk in receiving court under s. 20, *held* that the Queen's Bench Division could not amend the barrister's order so as to make it include the payment of such remuneration and allowances. *Reg. v. Corporation of Maidenhead* (2 L. R., Q. B. Div., vol. 8, p. 339.) *Held* also, notwithstanding such omission, that the act of the commissioners in certifying was a ministerial and not a judicial act, and that they had the power and were bound to make a second certificate, and were entitled to a peremptory mandamus compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough fund or rate, and compelling the corporation to order such amount to be levied by a borough rate].

(2.) The costs may be taxed in the prescribed manner, but according to the same principles as costs between solicitor and

* As to costs, see *Lovering v. Dawson* (44 L. J. R., N. S., C. P. 321). The full court cannot review the decision of the commissioner. The costs of and incidental to a petition under the Corrupt Practices (Municipal Elections) Act, 1872, are in the sole and absolute discretion of the commissioner who tries the petition; and his decision cannot be reviewed by the superior court, how flagrantly wrong soever it may be. *Maidenhead Election Petition* (2 Q. B. D. 8, 3, 9).

client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed.* *Election Petitions.*

[The court will not interfere with the discretion of the Master as to the amount allowed for counsel's fees and refreshers, unless it be manifest that he has failed to exercise it in a reasonable manner. *Hargreaves v. Scott* (L. R., C. P. D. 4, p. 21), Municipal Election Petition, Borough of Carlisle].

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereon certify the recognisance to be forfeited, and it shall be dealt with as a forfeited recognisance relating to a parliamentary election petition.

[The effect of section 19 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

99.—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate. Reception of
and attendance
on the election
court.

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale,

* See General Rules, 55.

*Election
Petitions.*

shall be treated as part of the expenses incurred in receiving the court. *

[The effect of section 20 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

Rules of pro-
cedure and
jurisdiction.

100.—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon.

[The judges made General Rules—November 29, 1872; Additional General Rules, December 10, 1872, January, 27, 1875. See Appendix].

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act† have the same powers, jurisdiction and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

[Lord Coleridge: “The court has power under this clause to strike out the name of a person improperly made a respondent to an election petition.” *Yates v. Leach* (L. R., 9 C. P., 605–608)].

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The General Rules in force at the commencement of this Act with respect to matters within this Part shall, until super-

* See Rule 8, Additional General Rules, December, 1872.

† As to how the words, “subject to this Act,” limit powers of court, see *Maude v. Lowley* (L. R., 9 C. P., 165), cited *Lovering v. Dawson* (2 L. R., C. P., 726).

seded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section. *Election Petitions.*

[The effect of section 21 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury on their certificate, out of the borough fund or borough rate. *Expenses of election court.*

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely) :

- (a.) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner ;
- (b.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs ; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.*

[The effect of section 22 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

102.—Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when *Acts done pending a petition not invalidated.*

* See Additional General Rules, December, 1872, 1-6.

*Election
Petitions.*

the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

[The effect of section 23 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

*Provisions as
to elections
in the room
of persons
unseated on
petition.*

103.—Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy; and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

[The effect of section 24 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

*Prohibition
of disclosure
of vote.*

104.—A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

[The effect of section 26 of 35 & 36 Vict. c. 60 (1872) is preserved in this clause].

PART V.

CORPORATE PROPERTY AND LIABILITIES.

*Corporate Land.**Corporate Land.*

105.—A municipal corporation may contract for the purchase of and hold any land * not exceeding in the whole five acres, either in or out of the borough, and thereon, or on any land belonging to or held in trust for the corporation, may build a town hall, council house, justices' room, with or without a police station and cells, or lock-ups, or a quarter and petty sessions-house, or an assize court-house, with or without judges' lodgings, or a polling station, or any other building necessary or proper for any purpose of the borough.

Power to purchase land for town hall, &c.

[The effect of section 40 of 7 Will. 4 and 1 Vict. c. 78 (1837) is preserved in this clause. The authority to build a gaol and house of correction is not repeated, the necessity or power to provide them being removed by the Prisons Act, 40 & 41 Vict. c. 21].

106.—The council may, with the approval of the Treasury, borrow † at interest on the security of any corporate land, or of any land proposed to be purchased by the council under this Act, or of the borough fund or borough rate, or of all or any of those securities, such sums as the council from time to time think requisite for the purchase of land, or for the building of any building which the council are by this Act authorized to build.

Power to borrow with approval of Treasury.

[The effect of section 8 of 23 & 24 Vict. c. 16 (1860) is preserved by this clause. It was held in the case of the *Attorney-General v. Corporation of Birmingham* (L. R., 3 Eq. 552), that a corporation is lawfully empowered to raise purchase money for land out of the borough fund].

107.—(1.) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the

Power to acquire land with the approval of the Treasury.

* Land cannot, however, be purchased except for the object distinctly specified. By the Statutes of Mortmain corporations are prohibited from purchasing lands in fee.

† See the Analytical Table of Borrowing Powers on next page.

[Here may be appropriately introduced a table which shows at a glance the general borrowing powers of municipal corporations :—

THE GENERAL BORROWING POWERS OF MUNICIPAL CORPORATIONS.

Purposes for which Loans may be raised.	What sanction is required for the Loans.	Periods over which the repayment of the Loans may be spread.	General provisions of the Law applicable to the Loans.	Where reproduced in this Act (45 & 46 Vict. c. 50).
Cemeteries, &c.	Treasury	30 years	15 & 16 Vict. c. 85, s. 20.; 16 & 17 Vict. c. 134, s. 7; 20 & 21 Vict. c. 81, ss. 20-21	
Expenses under Contagious Diseases (Animal) Acts (if the rate required thereupon would exceed 6d. in the £)	None	7 years. Where the rate would exceed 9d. in the £, the Treasury may extend the term to 14 years	32 & 33 Vict. c. 70, s. 98	
Free Libraries, Museums, and Schools of Art	Local Government Board	60 years	18 & 19 Vict. c. 70, s. 16; 34 & 35 Vict. c. 71, s. 4; 38 & 39 Vict. c. 55, s. 233	
Harbours and Piers	Board of Trade ..	Period fixed by the Board of Trade	24 & 25 Vict. c. 45, ss. 3-45; 25 Vict. c. 19	
Insane Asylums	None	30 years	16 & 17 Vict. c. 97, s. 42	
Magazines for storage of explosives	Treasury	20 years	38 Vict. c. 17, s. 72	
Municipal purposes generally	Ditto	The Treasury may, in their discretion, impose a limit	(a) 5 & 6 Will. 4, c. 76, s. 94; and (b) 23 & 24 Vict. c. 16	(a) Secs. 108, 109, 110-236. (b) Secs. 110 <i>et seq.</i> and 236.
Port Sanitary Works executed under the Public Health Act, 1875	Local Government Board	60 years	38 & 39 Vict. c. 55, s. 243	
Prison accommodation * ..	None	30 years	5 & 6 Vict. c. 98, ss. 9, 10; 11 & 12 Vict. c. 39; and 28 & 29 Vict. c. 126, ss. 27-28	
Reformatories and Industrial Schools ..	Secretary of State	30 years	37 & 38 Vict. c. 47, ss. 2 and 4	
Sanitary obligations (works authorized by the Public Health Act, 1875 +)	Local Government Board	60 years	38 & 39 Vict. c. 55, ss. 233-244	
Public Baths and Washhouses ..	Ditto	60 years	9 & 10 Vict. c. 74, s. 21; 35 & 36 Vict. c. 76, s. 34; 38 & 39 Vict. c. 55, s. 233	
Schemes for improvement of unhealthy areas, and erection of Improved Dwellings for Labouring Classes †	Ditto	60 years	38 & 39 Vict. c. 36, s. 22	
Working Men's Dwellings ..	Treasury	30 years, unless at discretion of Treasury	23 & 24 Vict. c. 16	Sec. 111.

* By the Prisons Act, 40 & 41 Vict. c. 21, local Prison Authorities were relieved on the 1st of April, 1878, and thenceforward, from the duty of maintaining Prisons, but the outlay involved in their obligation to provide their proportion of prison accommodation, as defined under the Act, may be raised by way of loan.

† Applies to all Urban Sanitary Authorities.

‡ Applies only to Urban Sanitary Authorities with a population amounting to 25,000 or upwards.]

council may, with the approval of the Treasury, purchase or acquire any land in such manner and on such terms and conditions as the Treasury approve, and the same may be conveyed to and held by the corporation accordingly.

(2.) The provisions of the Lands Clauses Consolidation Acts, 1845,* 1860,† and 1869,‡ relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchases of land under this section.

108.—(1.) The council shall not, unless authorized by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the Treasury.

Restrictions on alienation of corporate land without approval of Treasury.

(2.) The council shall not, unless authorized by Act of Parliament, lease or agree to lease any corporate land without the approval of the Treasury,§ except as follows :

- (a.) They may make a lease or agreement for a lease for a term not exceeding thirty-one years from the date of the lease or agreement, so that there be reserved and made payable during the whole of the term such clear yearly rent as to the council appears reasonable, without any fine.
- (b.) They may make a lease or agreement for a lease for a term not exceeding seventy-five years from the date of the lease or agreement, and either at a reserved rent or on a fine, or both, as the council think fit,—
 - (i.) Of tenements or hereditaments, the greater part of the yearly value of which, at the date of the lease or agreement, consists of any building or buildings ; or
 - (ii.) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith ; or
- (iii.) Where the lessee or intended lessee agrees to erect a building or buildings thereon of greater yearly value

* The 8 & 9 Vict. c. 18.

† The 23 & 24 Vict. c. 106.

‡ The 32 & 33 Vict. c. 18.

§ The consent of the Lords Commissioners of the Treasury to the alienation of the property of a corporation required by 94th section of the Municipal Corporations Act is sufficiently signified by a letter signed by their secretary. Such consent can authorize no alienation or charge of the corporate property further than is specified in the memorial on which it is founded—*Arnold v. Mayor and Corporation of Gravesend* (25 L. J., Eq. 776)

*Corporate
Land.*

than the land,—of land proper for gardens, yards, curtilages or other appurtenances to be used with any other house or other building erected or to be erected on any such land belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

[The effect of sections 94, 95, and 96 of the Act of 1835, and section 2 of 6 & 7 Will. 4, c. 104 (1836), is preserved in this clause. Section 15* of 8 & 9 Vict. c. 18 (1845), also bears upon the prohibition contained in subsection 2].

Power to
dispose of land
with approval
of Treasury.

109.—The council may, with the approval of the Treasury, dispose of any corporate land either by way of absolute sale, or by way of exchange, mortgage, charge, demise, lease, or otherwise, in such manner and on such terms and conditions as the Treasury approve.

[The effect of section 94 of the Act of 1835, and section 2 of 6 & 7 Will. 4, c. 104, is preserved in this clause].

Council may
renew leases,
&c.

110.—In the following cases—

- (a.) Where a body corporate of a borough was on the fifth of June one thousand eight hundred and thirty-five bound or engaged by any covenant or agreement, expressed or implied, or was enjoined by any deed, will, or other document, or was sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions;
- (b.) Where a body corporate of a borough theretofore ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed

* This section is as follows:—"Nothing in this or the special Act contained (any subsequent Act authorizing the leasing of lands) shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily."

period, or after the lapse of any number of years, or on the dropping of any life or lives, on the payment of an arbitrary fine,—

Then, notwithstanding anything in this Act, the council of the borough may renew the lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and on the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as the council could or might have done if this Act had not been passed.

[The effect of section 95 of the Act of 1835 is preserved in this clause. The word "renewal" does not mean a mere custom to let on lease at different rents. Although the terms may be slightly varied there must be such a similarity as to shew that the same lease has been renewed. The case of the *Attorney-General v. Corporation of Great Yarmouth* (21 Beav. 625) is one in point].

Working Men's Dwellings.

*Working
Men's
Dwellings.*

111.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the Treasury for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

*Sites for
working men's
dwellings*

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorized by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough

*Working
Men's
Dwellings.*

rate, or by money borrowed by the corporation under this Part.*

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

[The effect of c. 59 of 37 & 38 Vict. (Working Men's Dwellings Act, 1874) is preserved in this clause].

*Repayment of
Loans.*

Repayment of Loans.

Power for
Treasury to
impose con-
ditions as to
repayment
of money
borrowed.

112.—(1.) Where the Treasury approve a mortgage or charge under this Part they may, as a condition of their approval, require that the money borrowed on the security of the mortgage or charge be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund, or both.

(2.) In that case the sums required for providing for the repayment of the principal and interest of the money borrowed shall be by virtue of this Act a charge on all or any of the following securities, namely, the land comprised in the mortgage (without prejudice to the security thereby created), or any other corporate land, or the borough fund,† or the borough or other rates legally applicable to payment of the money borrowed or of the expenses which the money is borrowed to defray, as the Treasury direct.

[The effect of sections 1 and 8 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

Provisions as
to sinking
fund.

113.—(1.) Where money borrowed under this Part is directed to be repaid by means of a sinking fund, the council shall, out of the rents and profits of the land on which, or out of the borough fund or rates on which, the sums required for the sinking fund are charged under this Act, invest such sums, at such times, and in such Government annuities as the Treasury direct, and shall also from time to time invest in like manner all dividends of those annuities.

* See page 102 *ante* as to Acts under which all borrowing powers are authorized.

† See section 106 (page 101 *ante*).

(2.) The annuities shall, in the books of the Bank of England, be placed to the account of the corporation, and in the matter of this Act or of any previous Act under which the investment is made. *Repayment of Loans.*

(3.) The dividends of the annuities shall be received and invested by such persons as the council by power of attorney under the corporate seal from time to time appoint.

(4.) No transfer shall be made of the annuities, or of any part thereof, without the consent in writing of the Treasury addressed to the chief accountant of the Bank of England.

(5.) The direction in writing of the council by power of attorney under the corporate seal, with the consent in writing of the Treasury, shall be sufficient authority to the bank for permitting any such transfer.

[The effect of section 2 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

Purchase or Compensation Money.

Purchase or Compensation Money.

114.—(1.) Where purchase money or compensation has been paid to the Bank of England under an Act of Parliament in respect of land or any interest therein purchased or taken from a municipal corporation, or in respect of permanent damage to land of a municipal corporation, and the Treasury approve of the payment of the money or compensation, or of any money to arise from the sale of any Government securities in which the same has been invested to the corporation or the treasurer, the Treasury may, as a condition of their approval, require provision to be made for raising and for investing in Government annuities a sum equivalent to the amount of money so paid.

Provision for replacing purchase or compensation money paid to treasurer.

(2.) The foregoing provisions of this Part applicable in the case of a sinking fund, as regards the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this section.

(3.) The Treasury shall, when it appears to them that an amount of annuities equivalent to the amount so paid has been raised by investment, direct that the accumulation shall cease; and the annuities and the dividends thereof shall thenceforth be applicable as if the annuities had arisen from investment under the Act of Parliament under which the purchase money or compensation became payable.

(4.) But this section shall not apply to money payable to a municipal corporation when provision for the application of the

*Purchase or
Compensation
Money.*

money, or of the price or compensation from which the money is derived, is contained in any local Act of Parliament* relating thereto, and the money is to be paid to the corporation to be applied in conformity with that provision.

[The effect of section 3 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

*Investment
of proceeds
of sale or
exchange
authorized by
Treasury.*

115.—(1.) Where the Treasury approve of the sale or exchange of any corporate land or of any interest therein, their approval may be subject to such conditions as they think fit in relation to the investment for the benefit of the corporation of the money arising from the sale or exchange.

(2.) If the Treasury direct the money to be invested in Government annuities, the foregoing provisions of this Part respecting the mode of investing, payment of dividends, and transfer of annuities shall be applicable, but not so as to make any accumulation necessary.

(3.) If the Treasury consent to the application of the money or of any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent, require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer.

[The effect of section 4 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

*Power for
Treasury to
authorize
application
of certain
investments
for benefit of
borough.*

116.—The Treasury may at any time approve of the application of any annuities arising from investments under either of the two last preceding sections, or of the money to arise from the sale thereof, or any part thereof respectively, for the benefit of the inhabitants of the borough; and, as a condition of their approval, may require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, and so from time to time, and the provisions of this Part shall be applicable accordingly; but it shall not be imperative on the Treasury to impose the condition aforesaid where by reason of the application of the annuities or money to improvement of the property of the corporation or for the permanent benefit of the borough, or otherwise, under the special circumstances of the case, the

* This proviso contemplates the possibility of special circumstances occasionally arising where the authority for meeting the same is to be derived under a special Act of Parliament.

Treasury in their discretion think fit to dispense with the *Purchase or Compensation Money.*

[The effect of section 5 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

Misappropriation.

Misappropriation.

117.—If any person authorized to receive money to arise from the sale of any annuities or securities purchased or transferred under the foregoing provisions of this Part, or under any Act repealed by this Act, or any dividends thereon, or any other such money as aforesaid, appropriates the same otherwise than as directed by this Act, or by the Treasury in pursuance thereof, he shall be guilty of a misdemeanour, and shall be subject in respect thereof to the provisions of the Larceny Act, 1861,* applicable to a person guilty of a misdemeanour under section seventy-five of that Act, or to the provisions of any enactment for the time being substituted for that section.

[The effect of section 7 of 23 & 24 Vict. c. 16 (1860), and section 3 of 39 & 40 Vict. c. 20† (1876) is preserved in this clause].

Corporate Stock.‡

Corporate Stock.

118.—(1.) Any stocks, funds, or public securities (in this section referred to as stock) standing in the books of the Bank of England or of any other public company or society in the name of a municipal corporation, under any style or title of incorporation, and the dividends and interest thereof and all bonuses and accretions thereto, belonging to the municipal corporation, without being subject to any trust for charitable purposes, may be transferred by and paid to such persons as the council appoint by an instrument under the corporate seal, signed and sealed also by the clerk to the trustees of the municipal charities, who shall on request sign and seal it.

(2.) Any stock and money so standing belonging to the trustees of the municipal charities solely on charitable trusts

* The 24 & 25 Vict. c. 96, s. 75—"being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years, and not less than three years—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

† The Statute Law Revision (Substituted Enactments) Act. The section named is alone repealed by this Act by reason of its reproduction in this clause.

‡ Several of the larger municipal corporations, notably Liverpool, Birmingham, Manchester, Leeds, Nottingham, Blackburn, Stockton, Swansea, and Reading have now consolidated their debts by the issue of stock at an uniform rate of interest. Sections 53 and 55 of 13 & 14 Vict. c. 20 (1883) contain regulations for the payment of a composition for stamp duties on corporation stock.

*Corporate
Stock.*

may be transferred by and paid to persons appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk, and being also sealed with the corporate seal, which seal the mayor shall on request cause to be affixed thereto.

(3.) The dividends and interest of any stock and money so standing, belonging partly to the municipal corporation but subject to charitable trusts may be paid to persons authorized to have the same paid to them by an instrument in writing under the corporate seal, and appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk.

(4.) In every case the receipt of the persons authorized to give a receipt to the company or society by an instrument under the corporate seal, and signed and sealed by the clerk to the trustees of the municipal charities, shall be an effectual discharge to the company or society.

(5.) So much of the money so paid as is held on charitable trusts shall be paid over to the trustees of the municipal charities, and so much as the municipal corporation is entitled to beneficially shall go to the borough fund.

(6.) But the company or society shall not be bound to see to the application of that money, or to the validity of the appointment of the clerk to the trustees of the municipal charities, or to the execution of any instrument by any of them, or to inquire whether or not the stock or money is charged with or held on any charitable trust.

(7.) Every person authorized to so receive any money shall account to the council and to the trustees of the municipal charities for all money received by him, and on his failure so to account a court of summary jurisdiction may, on complaint either of the council or of the trustees, by summary order require him to do so.

[The effect of sections 45, 46, 47 and 48 of 7 Will. 4 and 1 Vict. c. 78 (1837) is preserved in this clause].

*Borough
Bridges.*

Maintenance
of borough
bridges.

Borough Bridges.

119.—(1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough,

or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council. *Borough Bridges.*

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge, but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4.) The council, with the consent of the Treasury, may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed.

[The effect of 13 & 14 Vict. c. 64 is preserved in this clause, but the requirement contained in that Act, that the sum to be borrowed must exceed £150 is taken away, the machinery of borrowing is adapted to the modern practice, and the form of mortgage (see Form P, Part IV. of the Eighth Schedule) is simplified].

Loans for Municipal Buildings.

*Loans for
Municipal
Buildings.
Power to
borrow for
buildings.*

120.—The council of a borough may borrow* money from the Public Works Loan Commissioners for the purpose of building, enlarging, repairing, improving, and fitting up any building which they are by this Act authorized to build, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of the loan, and may mortgage the rate or borough rate to the Commissioners in accordance with the Public Works Loans Act, 1875, or any amendment thereof, in such manner and form as the Commissioners direct.

[Section 40 of the Act (38 & 39 Vict. c. 89) cited in this clause is that which sets out the procedure. It is as follows:—"The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions, assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices' room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act. The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices' room, and offices connected therewith,

* See the Analytical Table of Borrowing Powers at page 102 *ante*.

*Loans for
Municipal
Buildings.*

or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act. The said justices and council respectively shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct"].

*Advowsons
and similar
Rights.*

Obligations
and powers
in respect of
advowsons,
&c.

Advowsons and similar Rights.

121.—(1.) Notwithstanding any sale by a municipal corporation of any advowson, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, whether the sale is made before or after the commencement of this Act, the corporation and its property shall continue liable to the same obligation (if any) of providing for and maintaining or contributing to the maintenance of any priest, curate, preacher, or minister, as if the sale had not been made; and that liability may be enforced by the same means, at the instance of the Crown or otherwise, as if this Act had not been passed, and the advowson or right had remained vested in the corporation.

(2.) Where a municipal corporation holds land subject to an obligation to provide a priest, curate, preacher, or minister, nothing in this Act shall preclude the corporation from augmenting or endowing his office, either by assigning to him and his successors in office a competent portion of the land, or by charging thereon an annual stipend, either in money or in kind for his and their use and benefit, except that no such augmentation or endowment shall be valid without the approval of the Treasury.

(3.) Where a municipal corporation sells a right of nomination to an ecclesiastical preferment, not being a benefice or perpetual curacy, that preferment shall, from and after the sale, be a benefice presentative, and the holder thereof and his successors shall be a body corporate, having perpetual succession and capable of taking and holding in perpetuity all property granted to or purchased for them by the Governors of the Bounty of Queen Anne, or by other persons contributing with those governors as benefactors.

[The effect of section 139 of the Act of 1835, and sections 2, 3 and 4 of 1 & 2 Vict. c. 31 (1838), is preserved in this clause. The case of *Hine v. Reynolds* (2 Scott's New Rep. 394; S. C. Man. & G 71) defined the power of nomination and the right of presentation under these statutes. This clause is, however, clearly drafted in accordance with the spirit of the decision cited].

122.—(1.) Where at the passing of the Municipal Corporations Act, 1835, a body corporate, or any particular class, number, or description of members thereof, or the governing body thereof, were in their corporate capacity, and not as trustees of a charity, seised or possessed of any manor or land whereto any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment was appendant or appurtenant, or of any advowson in gross, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, the advowson or right, if not sold before the commencement of this Act, shall be sold at such time and in such manner as the Ecclesiastical Commissioners for England direct, so that the best price be obtained for the same.

Advowsons and similar Rights.
Regulations as to sale of ecclesiastical patronage belonging to municipal corporation.

(2.) Upon any such sale the council shall, with the consent in writing of those Commissioners, signed by any three or more of them, convey, under the corporate seal, the advowson or right to the purchaser, or as he directs, and the advowson or right shall vest accordingly.

(3.) The proceeds of sale shall be paid to the treasurer and invested in Government securities, and the income thereof shall go to the borough fund; or those proceeds, or any part thereof, may be applied towards the liquidation of any debt contracted by the body corporate before the passing of the Municipal Corporations Act, 1835.

(4.) Any vacancy arising before the sale shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which the benefice or preferment is situate.

[The effect of section 139 of the Act of 1835, section 26 of 6 & 7 Will. 4, c. 77 (1836), section 3 of 6 & 7 Will. 4, c. 104 (1836), and section 1 of 1 & 2 Vict. c. 31 (1838), is preserved in this clause. See also the note to preceding clause].

Special Rates.

Special Rates.

123.—Where before the passing of the Municipal Corporations Act, 1835, a rate might be levied in a borough for the purpose of watching conjointly with any other purpose, nothing in this Act shall prevent the levying and collecting of such a rate for that other purpose solely, or affect the powers given in any Act anterior to the Municipal Corporations Act, 1835, as far as they relate to that other purpose; but where the amount of that rate might not before the passing of the Municipal

Power to continue rates for special purposes.

Special Rates. Corporations Act, 1835, exceed a given rate in the pound on the value of property rateable thereto, the rate to be levied for the other purpose solely shall not exceed such proportion of that given rate as appears to have been expended for that other purpose by an account of the average yearly expenditure during the last seven years before the passing of the Municipal Corporations Act, 1835, or during those of the same seven years during which the rate was levied.

[The effect of section 84 of the Act of 1835 is preserved in this clause. Arable and meadow lands beyond a limit of 200 yards from a street or continuous line of houses are not liable to a special rate. See *Hallett v. Churchwardens of Brighton* (7 E. & B., 342; S.C. 26 L.J., M. C., 61)].

*Misapplication
of Corporate
Property.*

Prohibition of
expenditure
of corporate
funds on
parliamentary
elections.

Misapplication of Corporate Property.

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognisance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognisance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, bye-law, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this section, or

assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour,* and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses † relating to parliamentary elections.

[As regards boroughs within this Act, c. 69 of 2 & 3 Will. 4 (1833) is reproduced in this clause].

Transitory Provisions.

Transitory Provisions.

125.—(1.) In the several cases following:

(a.) Where before the fifteenth of May one thousand eight hundred and sixty the Treasury on approving of a mortgage of corporate land had required a sinking fund in names of trustees;

(b.) Where before the same day the Treasury, on approving of the payment to a corporation or their treasurer of purchase money for or compensation in respect of corporate land, or of money arising from sale of Government securities in which the

Transfer of investments made before 1860 in names of trustees.

* The severe penalties following hereon have been noted at page 109 *ante* (footnote).

† See as to these, section 8 of 35 & 36 Vict. c. 33 (The Ballot Act, 1872) and section 2 of 38 & 39 Vict. c. 84.

Transitory Provisions.

same had been invested, had required provision for raising by investments in names of trustees an amount equivalent to the amount so paid ;

(c.) Where before the same day the Treasury, on approving of a sale or alienation of corporate land, had required the investment of the proceeds in names of trustees ;

The Treasury, if they have not so done before the commencement of this Act, may require any securities in which any such investments had been made to be transferred into the name of the corporation in the matter of this Act, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of Government annuities in the name of the corporation and in the matter of this Act.

(2.) The order in writing of the Treasury for that purpose shall be a sufficient discharge to the trustees from all claims in respect of the transfer of the securities in pursuance of the order.

(3.) The Treasury may, in the cases aforesaid, give such directions as they might give in the analogous cases in this Part provided for, arising after the commencement of this Act, or as near thereto as circumstances require, and the provisions of this Part shall apply accordingly.

(4.) Where any such transfer as aforesaid has before the commencement of this Act been made into the name of the corporation in the matter of any Act repealed by this Act, this Act shall, if the Treasury so direct, be substituted in the title of the account for that Act.

[The effect of section 6 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

Scheme re-
specting
mortgage debts
incurred before
1860.

126.—Where in a borough any mortgage debt had been before the fifteenth of May one thousand eight hundred and sixty incurred, for discharge of which no adequate provision then existed, the council, if they have not so done before the commencement of this Act, may submit to the Treasury any scheme for the discharge thereof by instalments, or a sinking fund, or both, extending over any term of years, and if the Treasury approve of the scheme, the sums required for discharge of the debt as proposed therein shall, by virtue of this Act, become charged on all or any part of the corporate land, or the borough fund, or borough rate, or any other rate applicable to discharge of the debt, or on all or any of those securities, as the Treasury

direct, and the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund, or instalments, or both, except the limitation to a period of thirty years, shall apply for discharge of the debt. *Transitory Provisions.*

[The effect of section 10 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause].

127.—Where in a borough debts had from time to time before the fifteenth of May one thousand eight hundred and sixty, been incurred under Acts of Parliament, with different periods assigned for discharge thereof, the council, if they have not so done before the commencement of this Act, may, with the consent of the Treasury, and with the previous consent in writing of the persons or bodies corporate to whom the debts are owing, consolidate the debts into one, and provide for discharge of the consolidated debt by annual instalments, or a sinking fund, or both, extending over a period not exceeding thirty years, and make the instalments or payments a charge on the borough fund, or borough rate, or any other rate applicable to the discharge of the debts, or on all or any of those securities, as the Treasury direct. *Consolidation of debts incurred before 1860.*

[The effect of section 11 of 23 & 24 Vict. c. 16 (1860) is preserved in this clause. See also note to section 118, page 109 *ante*].

128.—Nothing in this Act shall affect any power to sell, mortgage, alienate, or lease corporate lands in pursuance of an agreement made on or before the fifth day of June one thousand eight hundred and thirty-five, or of a resolution entered in the books of a body corporate on or before that date. *Saving for sales, &c., in pursuance of past contracts and resolutions.*

[The effect of section 94 of the Act of 1835 is preserved in this clause].

129.—Nothing in this Act shall prevent the levying or collection of any rate for the purpose of paying any debt contracted before the commencement of this Act or any interest thereon. *Saving for rates in respect of past debts.*

[The effect of the proviso to section 85 of the Act of 1835 is preserved in this clause].

130.—It shall not be lawful for the council of a borough of which the body corporate had before the passing of the Municipal Corporations Act, 1835, contracted any lawful debt chargeable on any tolls or dues belonging or payable to that body corporate, *Saving for rights of creditors in respect of tolls or dues.*

*Transitory
Provisions.*

or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were or was applicable before the passing of that Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission thereof or exemption therefrom or of or from any part thereof, except with the consent in writing, under the hands of a majority in number and amount, of the creditors to whom the debt is due, until after the debt and all arrears of interest due thereon have been fully paid and satisfied.

[The effect of the proviso of section 92 of the Act of 1835 is preserved in this clause].

Saving for
lawful debts
contracted
before
5 & 6 Will. 4,
c. 76.

131.—(1.) Notwithstanding anything in this Act, the application of the borough fund to the several payments specified in the Fifth Schedule or otherwise authorized by this Act shall be subject to the payment of any lawful debt due from the municipal corporation to any person which was contracted before the passing of the Municipal Corporations Act, 1835, and is unredeemed, or of so much thereof as the council from time to time are required or deem it expedient to redeem, and to the payment from time to time of the interest on so much thereof as remains unredeemed.

(2.) The council may from time to time execute under the corporate seal any deed or obligation in the name of the corporation for securing repayment and satisfaction of any such debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

[As to obligations.—In *Reg. v. Corporation of Lichfield* (4 Q. B., 893) the council elected under 5 & 6 Will. 4, c. 76, borrowed the sum of £200 to repay their treasurer certain sums which he had paid to creditors of the old unreformed corporation. They gave a promissory note to the party lending the money. They did not, however, hand over this money to the treasurer, but allowed him to receive their then accruing income in reduction of what was due to him, and applied the £200 to purposes to which the income would have been applicable. It was *held*, that the corporation had no right to give the promissory note, for it was not given to secure a debt contracted before the passing of 5 & 6 Will. 4, c. 76. This led to the passing of 7 Will. 4 and 1 Vict. c. 78, c. 28, of which is reproduced in the following subsection (3)].

(3.) Money borrowed by a council for the purpose of being applied, and applied in or towards satisfaction and discharge of any such pre-existing debt or obligation, shall be deemed to be a debt contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

[The effect of section 92 of the Act of 1835, section 1 of 6 & 7 Will. 4, c. 104 (1836), and section 28 of 7 Will. 4 and 1 Vict. c. 78 (1837), is preserved in this clause]. *Transitory Provisions.*

132.—Nothing in this Act shall make liable to the payment of any debt contracted by any body corporate of a borough before the passing of the Municipal Corporations Act, 1835, any part of the real or personal estate of that body corporate which before the passing of that Act was not liable thereto or authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of that Act, which before the passing of that Act could not lawfully be levied therein towards payment of the same.

Saving against new liability to debts contracted before 5 & 6 Will. 4, c. 76.

[The effect of section 92 of the Act of 1835 is preserved in this clause]

PART VI.

CHARITABLE AND OTHER TRUSTS AND POWERS.

*Charitable
Trusts.**Charitable Trusts.**

Administration
of charitable
trusts and
vesting of legal
estate.

133.—(1.) Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the members thereof, in his or their corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land, in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853,† vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for

* *Prima facie* a municipal corporation has full power to dispose of all its property like a private individual, and it lies on the person alleging the contrary to establish a trust.—*Evan v. Aron (Corporation)*, 29 Bevan, 144. The Attorney-General has power to restrain or afterwards impeach the alienation of corporate property made pending the granting of a charter. Until the repeal of the 97th section of the 5 & 6 Will. 4, c. 76, by the Statute Law Revision Act, 1874, the alienation of corporate property after formal notice has been given by the Crown of its intention to grant a charter could be impeached under its provisions.

† The 16 & 17 Vict. c. 137, s. 65.

the time being vested in the trustees or any of them, or in any persons or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance. *Charitable Trusts.*

[It was held in *Rex v. Sankey* (5 A. & E., 423) that section 71 of the Act of 1835 applied to all cases where property had been granted to a corporation subject to a payment for charitable purposes imposed by the grantor. As to what constitute charitable trusts within the meaning of the words of the section, see in *re Oxford Charities* (3 Myl. & Cr., 239), wherein it was held that property appropriated by the corporation for the maintenance of lecturers to preach before the corporate body was not property to be regarded or held as a charitable trust. But tolls granted by charter to a corporation for the reparation of the walls and bridges of a borough are gifts from charitable persons within 39 Eliz. c. 5, to be administered in the Court of Chancery.—*Attorney-General v. Corporation of Shrewsbury* (6 Beav., 220). This statute also enables a corporation to “found hospitals for the poor, and to incorporate them.” See in *re Corporation of Newcastle* (12 Cl. & F., 402)].

(2.) Nothing in this section shall take away, abridge, or prejudicially affect any power, authority, or jurisdiction of the Charity Commissioners for England and Wales.

[The effect of section 71 of the Act of 1835, section 65 of 16 & 17 Vict. c. 137 (1853), and section 2 of 23 & 24 Vict. c. 136 (1860), is preserved in this clause].

Special Trusts and Powers.

Special Trusts and Powers.

134.—The municipal corporation of a borough shall be trustees* for executing by the council† the powers and provisions of all Acts of Parliament made before the passing of the Municipal Corporations Act, 1835 (other than Acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the body corporate of the borough, or any of the members thereof in their corporate capacity, was or were sole trustees‡ before the first election of councillors in the borough under the Municipal Corporations Act, 1835. Corporation to be trustee where corporators trustees.

[The effect of section 72 of the Act of 1835 is preserved in this clause].

* The word “trustees” means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated. See section 7, page 26 *ante*.

† In *Reg. v. Corporation of Poole* it was held that the council were substituted for the mayor, bailiff, and burgesses, who, under a local Act, had the management of certain quay and harbour dues, but that the council were strictly bound by the provisions of the local Act.

‡ The case of *Staniland v. Hopkins* (9 M. & W., 178) clearly construed that the body corporate should be trustees or commissioners for executing, by the town council, the powers and provisions of all Acts of Parliament, under which the old body corporate, or any of the members thereof in their corporate capacity, were sole trustees.

Special Trusts and Powers.

Appointment of members of council to be trustees in cases of joint trusts and other cases.

135.—(1.) In every borough in which the body corporate, or a particular or limited number, class, or description of members thereof, or of persons appointed by the body corporate, was or were before the passing of the Municipal Corporations Act, 1835, trustees jointly with other trustees for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class or description of members or nominees thereof, by any statute, charter, bye-law, or custom, before the passing of the Municipal Corporations Act, 1835, was or were, lawfully appointed to or exercised any powers, duties, or functions, not otherwise in the Municipal Corporations Act, 1835, or this Act, provided for, and the continuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination, or appointment of trustees, or on which a new election, nomination, or appointment has usually been made (and if there is no day prescribed or usually observed, then on or within ten days after the first of January in every year), shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

(2.) In every case of extraordinary vacancy among the trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold his trust or office for such time as that person would regularly have held it.

[The effect of section 73 of the Act of 1835 is preserved in this clause].

*Local Acts.**Local Acts.*

Transfer of powers of local authorities to municipal corporations.

136.—(1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching,

regulating, or improving, a borough, or any part thereof, or for *Local Acts*. providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

[The corporation have power to defray the expenses of such transfer under 35 & 36 Vict. c. 91 (1872)].

(2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation,* and the transferring trustees shall be discharged therefrom.

[The effect of sections 2 and 3 of 20 & 21 Vict. c. 50 (1857) is preserved in this clause].

137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorized to be levied for lighting.

Power for council to extend local lighting Act.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so

* See *Swinford v. Kettle* (L.R., 1 Q.B., 549) as to the extent of the power vested in the transferring authority (the borough and town of Margate).

Local Acts.

specified shall not exceed the average expense in the pound of lighting the other parts of the borough.

[The effect of section 87 of the Act of 1835 is preserved in this clause].

Exercise of
powers under
local Acts.

138.—Everything * provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature,† if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

[The effect of section 8 of 6 & 7 Will. 4, c. 105 (1836) is preserved in this clause].

* This does not repeal or alter any other powers conferred by previous sections, but gives additional authority. See hereon *Staniland v. Hopkins* (9 M. & W., 178).

† The reduction of fees payable to an overseer and clerk of a local Court of Requests by the town council professing to act under the powers here given was held to be unauthorized, the regulation of such fees being clearly a matter relating to the "business of a court of civil judicature."—*Powell v. Powell* (6 M. & W., 627).

PART VII.

BOROUGH FUND: BOROUGH RATE: COUNTY RATE.

*Borough Fund.**Borough
Fund.*

139.—The rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all money, dues, chattels and valuable securities belonging or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and as far as the application thereof is otherwise provided for) shall go to the borough fund.

[The effect of section 92 of the Act of 1835 is preserved in this clause, which excludes the expenditure of the principal of any moneys belonging to borough.—*Ex parte the Corporation of Hythe* (4 Y. & Coll., 55).]

140.—(1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule.

(2.) The payments specified in Part I. of that schedule may be made without order of the council; those specified in Part II. may not be made without such order.

The two Parts of the Fifth Schedule are as follows:—

PAYMENTS OUT OF THE BOROUGH FUND.

PART I.

Payments which may be made without Order.

1. The remuneration (if any) of the mayor, of the recorder (if any) in his capacity either of recorder or of judge of a borough civil court, of the stipendiary magistrate (if any), of the town clerk, of the treasurer, of the clerk of the peace when paid by salary, of every other officer appointed by the council, and of the clerk to the justices.

2. The remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition.

3. The remuneration certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional clerk.

*Borough
Fund.*

PART II.

Payments which may not be made without Order.

13 & 14 Vict.
c. 42, s. 3 (1850).

41 & 42 Vict.
c. 26 (1878).

1. The expenses incurred by overseers, and by the town clerk and other municipal authorities, in relation to the enrolment of burgesses and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under section thirty of the Parliamentary and Municipal Registration Act, 1878.

2. The expenses incurred by the town clerk in providing accommodation for an election court held under this Act.

3. The expenses of providing, furnishing, maintaining, or improving the corporate buildings, including the justices' room (if any), and the necessary expenses of that room.

4. The fees payable to the clerk of the peace if not paid by salary, and under this Act to the borough coroner.

5. The payments to be made under this Act to or in respect of the borough police and to any special constable, including the following payments (namely) ;

(a.) Such salaries, wages, and allowances to the borough constables, and at such periods, as the watch committee, with the approbation of the council direct; and

(b.) Such further sum as may be awarded by the watch committee, subject to the approbation of the council, or by the court of quarter or petty sessions, to a borough constable as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of his duty, or as may be awarded by the watch committee, subject to the approbation of the council, to a borough constable, as an allowance to him when disabled by bodily injury, or worn out by length of service; and

(c.) Any extraordinary expenses which a borough constable appears to have necessarily incurred in apprehending offenders and executing the orders of any justice having jurisdiction in the borough, such expenses having been first examined and approved by that justice; and

(d.) All other charges and expenses which the watch committee, subject to the approbation of the council, direct to be paid for the purposes of the borough constabulary force.

6. The costs and expenses payable by the corporation in respect of the prosecution, maintenance, conveyance, transport, or punishment of offenders.

7. All sums payable under this Act by the corporation of the borough to the treasurer of a county.

8. The expenses of and incidental to the division of a borough into wards or the alteration of wards, including the remuneration of the commissioner appointed for the purposes of the division or alteration.

9. Such remuneration to the clerk to any commissioners for taxes in respect of making copies of assessments as the council think reasonable.

10. The expenses of and relating to a charter of incorporation for a borough, and of and relating to all elections acts and proceedings under the charter.

11. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

12. All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect.

(3.) No other payment shall be made out of the borough fund, except—

(a.) Under the authority of an Act of Parliament; or

(b.) By order of the council; or

(c.) By order of the court of quarter sessions for the borough; or

(d.) By order of a justice in pursuance of this Act; or

(e.) In cases in which the court of quarter sessions for a county, or a justice acting in and for a county in the discharge of his judicial duty, might make an order for the payment of money on the treasurer of the county. *Borough Fund.*

(4.) Saving, nevertheless, in relation to the application of the borough fund as authorized by this section, or otherwise by this Act, all rights, interests, and demands of all persons in or on the real or personal estate of the municipal corporation, by virtue of any legal proceeding, or of any mortgage, or otherwise.

[The effect of sections 59 and 92 of the Act of 1835, and section 30 of 41 & 42 Vict. c. 26 (1878), is preserved in this clause. As to whether corporate property held for public purposes can be taken in execution, see *Doe dem. Parr v. Roe* (1 Q.B., 700). As regards authority of council to oppose a local bill and defray expenses from borough fund, where no surplus, see *Reg. v. Mayor of Sheffield* (L.R., 6 Q.B., 652) *contra Attorney-General v. Mayor of Wigan* (1 Kay, 268). The saving in subsection 4 is framed with reference to *Arnold v. Mayor of Gravesend* (2 K. & J., 574)].

141.—(1.) An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk. *Orders for payment of money.*

(2.) Any such order may be removed into the Queen's Bench Division of the High Court by writ of certiorari,* and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

[The effect of section 59 of the Act of 1835, and section 44 of 7 Will. 4 & 1 Vict. c. 78 (1837) is preserved in this clause].

142.—(1.) All payments to and out of the borough fund shall be made to and by the treasurer. *Payments to and by treasurer*

(2.) All payments to the treasurer shall go to the borough fund.

[The effect of section 92 of the Act of 1835 is preserved in this clause. The court will not issue *mandamus* to the mayor to pay over money arising from the rent of corporate property to the treasurer of the borough unless application be made by the treasurer, or after he has been required to demand such money from the mayor.—*Reg. v. Frost* (8 A. & E., 832)].

143.—(1.) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or other- *Application of surplus of borough fund*

* The cases bearing upon this power of removal are *Reg. v. Mayor of Liverpool* (41 L.J., Q. B., 175); *Reg. v. Mayor of Bridgewater* (10 A. & E., 281); *Reg. v. Paramore* (Ib. 286); *Reg. v. Town Council of Lichfield* (1 Q. B., 893); *Attorney-General v. Mayor of Wigan* (1 Kay, 286); *Reg. v. Mayor and Corporation of Sheffield* (M. R., 6 Q. B., 652); *Reg. v. Prest* (16 Q. B., 32); *Reg. v. Dunn* (5 Q. B., 959); *Reg. v. Greene* (1 Q. B., 645).

*Borough
Fund.*

wise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough.

(2.) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed.

[The effect of section 92 of the Act of 1835, and section 12 of 23 & 24 Vict. c. 16 (1860), is preserved in this clause. The watch committee of Liverpool, the borough fund of which town had a surplus, made an order on the borough treasurer for the payment of the costs of a police officer who had prosecuted a newspaper for a libel upon him in the discharge of his duty. *Held* that such order was not in respect of an "allowance," nor a charge or expense for the purposes of the constabulary force within the meaning of sec. 82 of 5 & 6 Will. 4., c. 76, nor an application of the fund for the public benefit of the inhabitants of the borough within sec. 92, and that a rule must go for a *certiorari* to bring up the order for the purpose of being quashed. *Reg. v. The Mayor and Town Council of Liverpool* (41 L. J. R., N. S., Q. B., 175.) This section removes all difficulty where a surplus exists, and invests the council with an absolute discretion as regards outlay for the public benefit and improvements of the borough].

*Borough
Rate.*

Power
for council
to make
borough rate
and assess
contribution
thereto.

Borough Rate.

144.—(1.) If the borough fund is insufficient for the purposes to which it is applicable under this Act or otherwise by law, the council shall from time to time estimate, as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes.

(2.) In order to raise that amount, the council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough.

[A borough rate is valid though not made in public. *Jones v. Johnson* (5 Ex., 862)].

(3.) A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment, at any time within six months before the making of the rate.

[See *Woods v. Reed* (2 M. & W., 777), *Attorney-General v. Corporation of Lichfield* (11 Bev., 120) and *Jones v. Johnson* (5 Ex., 862), the difficulties of which are removed by this subsection].

(4.) The council shall assess the contributions to the borough *Borough* rate on the several parishes and parts of parishes in the borough *Rate.* in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate.

(5.) That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate.

(6.) But if for any reason the council think that the valuation list or poor rate is not a fair criterion of value they may cause an independent valuation to be made.

(7.) For the purpose of assessing a borough rate, or for the purpose of an independent valuation, the council from time to time may cause any of the books of assessment of any rates or taxes, parliamentary or parochial, on any property, and the valuation by which the assessment is made, in the hands of the overseers, to be brought before them, and may take copies thereof or extracts therefrom, or may direct any person to take copies of or extracts from such books being in his hands, without having the same brought before the council, or may call before them any overseer to give evidence respecting the same; and may cause copies of the total amount assessed in each parish in respect of any tax payable to the Crown, and the total amount of the valuation of the property on which that assessment was made in any past year, to be made out by the clerk to the commissioners of each district.

(8.) The overseers and such persons as they select, by warrant of the council, signed by the mayor and sealed with the corporate seal, may enter on, view, and examine any land chargeable to the borough rate, in order to ascertain the annual value at which it ought to be charged; but no such entry shall in any case be made unless fourteen days' previous notice in writing, signed by the mayor and sealed with the corporate seal, of the intention to make the entry, has been given to the overseers and to the persons on whose land the entry is to be made.

(9.) If on any occasion the overseers of a parish think that their parish is aggrieved by a borough rate, on account of the proportions assessed as the contributions of the respective parishes being unequal, or on account of some parish being

*Borough
Rate.*

without sufficient cause omitted, or on account of any other just cause of complaint, they may appeal to the recorder at the next quarter sessions for the borough, or if there is none, to the next quarter sessions for the county wherein the borough is situate, or whereto it is adjacent, against such part of the rate only as affects their parish.

[A town council of a borough levied a borough rate under 5 & 6 Will. 4, c. 76, s. 92; an out-township being one of the townships assessed to such rate. The rate was duly levied and paid. The overseers of the parish having appealed to the borough quarter sessions against the rate, the sessions made an order to amend the rate by increasing the amount at which the township was assessed. No notice of the appeal was given to the out-township. The overseers of the out-township having refused to pay the additional amount assessed—*Held* that the remedy of the town council, if any, for enforcing the payment of such additional rate was by a warrant of distress issued by the mayor or two justices for the borough under 7 Will. 4 and 1 Vict. c. 81, s. 1, and not by a *mandamus* to the overseers to enforce such payment.—*Reg. v. Overseers of Huntslet* (El. & El., 775)].

(10.) The recorder or quarter sessions shall hear and finally determine the appeal, and either confirm such parts of the rate as are appealed against, or correct any inequalities, disproportions, or omissions proved to exist therein, as to him or them appears just.

(11.) The expenses of the appeal shall be paid by such parishes or persons and in such proportions as the recorder or court having cognisance of the appeal directs.

(12.) If any person having custody of any book for which the council call under this section, fails to produce it to the council, or to permit any copy thereof or extract therefrom to be made or taken, or to give such evidence as the council require, he shall, on summary conviction, be liable to a fine not exceeding ten pounds.

(13.) If any clerk to the commissioners of a district fails to make any copy, which he is required to make under this section, within a reasonable time after his receipt of the order to make it, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

[The effect of section 92 of the Act of 1835, and 55 Geo. 3, c. 51, is preserved in this clause].

Collection of
borough rate
in undivided
parish.

145.—(1.) Where a parish is wholly in a borough, the council may from time to time, if they think fit, order the overseers to pay the contribution of the parish to the borough rate out of the poor rate made or to be made for the parish.

(2.) The overseers shall pay the contribution to the council or as they order.

(3.) If the overseers fail to pay as ordered, the amount may be levied * off the goods of them or any of them, by distress, by virtue of a warrant signed by the mayor and sealed with the corporate seal, or signed by two justices in and for the borough.

*Borough
Rate.*

[The effect of 7 Will. 4 and 1 Vict. c. 81, is preserved in this clause, which was originally enacted in consequence of the Act of 1835 having omitted to extend to borough rates some of the provisions of the 55 Geo. 3, c. 51. The terms of this clause and also those of the following clause have been modified from the original enactments with the object of better harmonizing the collection of borough rates with the general law of rating].

146.—(1.) Where a parish is partly in and partly out of a borough, the overseers, on receipt of an order for payment of money for the contribution of the part in the borough towards a borough rate, which order the council may make as if the whole parish was in the borough, shall assess on and levy from the occupiers of hereditaments rateable to the poor rate in that part of the parish the amount necessary for the contribution, either as a separate rate, for which the overseers shall have all the powers which belong to them for levying a poor rate, or with and as part of the poor rate to which occupiers in that part of the parish are liable in common with occupiers in the other part.

*Collection of
borough rate
in divided
parish.*

(2.) Any person rated under this section may appeal against the rate in like manner and with the like consequences, and subject to the like provisions and regulations, as in appeals against a poor rate.

[Notice of appeal must be given to the town clerk, he being the proper officer of court.—*Reg. v. Recorder of Carmarthen* (7 A. & E., 756). It must state that the party appealing is aggrieved, or show facts from which such may be inferred.—*Reg. v. Bond* (6 A. & E., 905)].

(3.) The overseers shall pay the amount of the contribution to the council, or as they order, and in default thereof shall be subject to all provisions and penalties provided by law concerning nonpayment of contribution to a borough rate.

(4.) Every overseer and collector shall account for the money collected and expended under this section to the auditor of the district comprising the parish in the like manner, and with the like incidents, consequences, liabilities, and power of appeal as in the case of the poor rate; and the Local Government Board shall have the like power to make orders to regulate the mode of accounting as they have in regard to other local rates.

* See subsection 9 of section 114, p. 129, ante.

*Borough
Rate.*

(5.) If any balance is found in the hands of any such overseer or collector he shall apply it towards the next rate required under this section, or pay it to his successor in office.

(6.) In default of his so applying it while in office, or making payment to his successor within seven days after the balance is found, the auditor shall proceed to recover it.

(7.) The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect the rate under this section, and shall receive thereout such remuneration for the additional duty as the overseers, with the consent of the vestry, determine.

(8.) The collector or other person appointed shall, for the purposes of this section, have all the powers of overseers.

(9.) The overseers, in estimating the amount of their assessment under this section, may include a sum for costs of assessment and collection, and a reasonable sum for rates excused or irrecoverable.

[The effect of section 2 of 12 & 13 Vict. c. 65, section 10 of 13 & 14 Vict. c. 101, section 37 of 39 & 40 Vict. c. 61, and section 17 of 42 & 43 Vict. c. 54, is preserved in this clause].

*Rating of
owners instead
of occupiers for
borough rate in
certain cases.*

147.—Where the vestry of a parish has made or makes, before or after the commencement of this Act, under section four of The Poor Rate Assessment and Collection Act, 1869, an order, as in that section provided, to the effect that the owners, instead of the occupiers, of such rateable hereditaments, as therein mentioned, shall be rated to the poor rate in respect thereof, every such order, while in force after the commencement of this Act, shall be deemed to apply to and include rating to the borough rate, with the same incidents, conditions, powers, liabilities, and remedies as if the borough rate were a poor rate.

[The section here cited (32 & 33 Vict. c. 41, s. 4) is as follows :—

“The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order ; and thereupon and so long as such order be in force the following enactments shall have effect :—

(1.) The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate ;

(2.) If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of

which he is the owner whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated ;

Borough Rate.

(3.) The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect ;

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included"].

148.—Any warrant required for the levy or collection of a borough rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

Warrants for levy of borough rate.

[The effect of section 5 of 6 & 7 Will. 4, c. 104 (1836), is preserved in this clause].

149.—All sums levied in pursuance of the borough rate shall go to the borough fund : and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough fund is applicable under this Act, or otherwise by law ; and, as regards a borough named in the schedules to the Municipal Corporations Act, 1835, to all purposes to which, before the passing of that Act, a borough rate was by law applicable in the borough, or a county rate was applicable in a county.

Borough rate to go to borough fund ; and its application.

[The effect of section 92 of the Act of 1835 is preserved in this clause. By a local Act, passed in 1851, certain property before vested in commissioners was vested in the corporation of Birmingham. Power was given to the council of purchasing land for the purposes of the Act and of executing certain improvement works specified in a schedule ; the expenses of the works for making new approaches to the town hall, and for enlarging and altering the existing streets to be defrayed by a "street improvement rate" not exceeding 6d. in the pound, and mortgageable to the extent of £100,000 ; and all other expenses of carrying the Act into execution to be defrayed by a "borough improvement rate" not exceeding 2s. in the pound, and mortgageable to the extent of £150,000. From the street improvement rate certain classes of persons were wholly exempted, and canal and railway companies were in part exempted. Nothing therein contained was to alter any of the powers, privileges, and authority vested in the corporation by any past or future Acts in relation to municipal corporations. By another local Act passed in 1861 certain other specified improvements were provided for, and it was decided that the expense (amongst other things) of widening and improving certain specified streets was to be defrayed out of "the street improvement rate." The Corporation Mortgages Act, 1860, empowered corporations generally, with the approbation of the Treasury, upon application made after due notice given, to make purchases of land for public purposes ; but nothing therein contained is to "repeal, abridge, or affect" any power or authority of any body corporate or council under any local Act. The corporation of Birmingham having contracted for the purchase of land for the widening of a street (not comprised in the works specified in the local Acts of 1851 and 1861), and having, after due notice given, and after all parties interested in the scheme had been heard before a commissioner deputed by the Treasury, obtained the sanction of the Treasury to the purchase of the land and the charging of the borough fund with the

Borough Rate.

purchase money. *Held* upon the construction of the statutes that the corporation were lawfully empowered to raise the purchase money out of the borough fund. *Attorney-General v. Corporation of Birmingham* (3 Eq., 552).

In an information against a corporation to restrain them from applying certain funds in aid of the borough fund, a decree was made by which the corporation was ordered to pay to the relator the costs of the information. *Held* that the relator was entitled to charge these costs upon a fund standing in trust for the corporation and arising from the proceeds of the sale of property belonging to the corporation. *Attorney-General v. Corporation of Thetford* (8 W. R., 467).

Burgesses having been omitted from the list of voters, obtained a rule *nisi* in the Queen's Bench calling on the mayor to show cause why he should not hold a court to revise the list. The mayor instructed an attorney to show cause. The court made the rule absolute. The attorney brought an action against the corporation for his costs. *Held* that the litigation on the part of the mayor having been justifiable, the costs were payable out of the borough fund under the 5 & 6 Will. 4. c. 76, s. 92. *Lewis v. Mayor &c., of Rochester* (3 L. T., N. S., Q. B., 300).

A waterworks company, established to supply water to the borough of S—, was empowered by Act of Parliament to make rules and regulations which, before coming into force, were to be approved of by two justices of the borough. Certain of such proposed rules and regulations having been brought before the justices for approval, it was thought by the corporation that they should be opposed. Expenses were incurred in so opposing them, and the opposition was in great part successful. The company also promoted a Bill in Parliament, with the view of obtaining further powers. The corporation, considering that the bill was objectionable, opposed it in Parliament, and it was eventually withdrawn. Orders were made for the payment out of the borough fund of the expenses incurred in opposing the rules and regulations and the bill promoted by the company. *Held* that as the expenses above mentioned could not be expenses "necessarily incurred in carrying into effect the provisions" of the Municipal Corporations Acts within the 92nd section of the Act, and as they did not fall within any of the payments specified in the Act, they were not chargeable upon the borough fund, and that the orders were invalid. *Reg. v. The Corporation of Sheffield* (40 L. J. R., N. S., Q. B., 247).

See also section 143 and note at page 128.]

*County Rate.**County Rate.*

General exemption of quarter sessions boroughs from county rate.

150.—(1.) Where a borough has a separate court of quarter sessions, the justices of a county wherein the borough or any part thereof is situate shall not assess any hereditaments in the borough to any county rate; and, except as is expressly by this Act provided, every part of the borough shall be wholly free from contributing to any rate or assessment of any kind of and for that county.

[Boroughs are not exempted from rates assessed on the Hundred. See *Birley v. Inhabitants of the Hundred of Salford* (11 M. & W., 391)].

(2.) But nothing in this section shall prevent the levy or collection of arrears of any county rate made before the grant of a separate court of quarter sessions.

[The effect of section 112 of the Act of 1835 is preserved in this clause].

Liability of quarter sessions borough for

151.—The municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay such

sums, if any, as are expended out of the county rate of the *County Rate*. county in which the borough is situate, and as are not otherwise prosecution expenses of county. paid or chargeable, in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of all offenders committed for trial from the borough to the assizes for the county.

[The effect of section 114 of the Act of 1835 is preserved in this clause, the opening words of which are inserted with reference to *Reg. v. New Windsor* (1 Q. B. D., 152), and *Reg. v. Monck* (2 Q. B. D., 554).]

152.—(1.) If the whole or any part of the area for the time Liability of certain quarter sessions boroughs to other county expenses. being comprised in a borough having a separate court of quarter sessions was, before the eleventh of July, one thousand eight hundred and thirty-two, chargeable with or liable to contribute to the county rate of the county in which it is situate, the municipal corporation shall, in addition to its liability to pay for the purposes mentioned in the last foregoing section, continue liable to contribute to the county rate for other purposes (in this Act referred to as general county purposes), as if this Act had not been passed.

(2.) General county purposes shall not include the costs arising out of coroners' inquests, or the expenses incurred under the Sale of Food and Drugs Act, 1875,* in respect of the county, or, in the case of a borough having its own inspector of weights and measures, the expenses relating to the inspection of weights and measures for the county, or payments to or in respect of special constables.

[The effect of section 117 of the Act of 1835, section 5 of 16 & 17 Vict. c. 79 (1853), and section 5 of 42 & 43 Vict. c. 30, is preserved in this clause].

153.—(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county and having a separate court of quarter sessions an account showing separately— Mode of accounting by borough to county.

(a.) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county; and

(b.) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all

* The 38 & 39 Vict. c. 63,

County Rate.

sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received ;

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order ; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges.

[The mayor of a borough without a commission of peace is *ex officio* a justice for the borough, whose judicial acts are binding on justices of county in which borough is situate.—*Wilson v. Strugnell* (L. R., 7 Q. B. D., 548)].

(4.) If any difference arises concerning the account, it shall be decided by the arbitration of a barrister, named, on the application either of the treasurer of the county or of the treasurer of the borough, by the Secretary of State. The arbitrator may, if he thinks fit, adjourn the hearing from time to time, and may require all such information to be afforded by either party as he thinks fit. He shall by his award in writing determine the amount to be paid by the council to the treasurer of the county, and his award shall be final and conclusive. He shall also assess the costs of the arbitration and determine by whom and out of what fund they shall be paid.

[The effect of section 117 of the Act of 1835 is preserved in this clause. Subsection 3 includes the effect of section 38 of 15 & 16 Vict. c. 81 (1852), and subsection 4 that of section 2 of 5 Geo. 4, c. 85].

PART VIII.

ADMINISTRATION OF JUSTICE.

*County Justices.**County Justices.*

154.—(1.) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county.

Jurisdiction
of county
justices in
borough.

[In practice the county justices do not exercise their powers in boroughs to which a separate commission of the peace has been granted. Their power to act in such boroughs has been decided in several cases, to wit—*Rea v. Amos* (2 B. & A., s. 33); *Mayor of Reigate v. Hart* (L. R., 3 Q. B., 244); *Blankley v. Winstanley* (3 T. R., 279); *Bates v. Winstanley* (4 M. & S., 429, 436); and *Wakefield Board of Health v. West Riding and Grimsby Railway Company* (6 B. & S., 94)].

(2.) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exerciseable out of quarter sessions, of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835.

[The effect of section 111 of the Act of 1835 is preserved in this clause. County magistrates are not excluded for hearing appeals under 9 Geo. 4, c. 61, s. 27, against the refusal of borough magistrates to grant an alehouse license. See *Reg. v. Deane* (2 Q. B. 96); *Reg. v. Recorder of Bristol* (24 L. J., M. C.); *Reg. v. Cockburn* (4 E. & B., 65)].

*Borough Justices.**Borough Justices.*

155.—(1.) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be

Mayor and
last mayor to
be borough
justices.

*Borough
Justices.*

mayor, continue to be such a justice during the year next after * he ceases to be mayor.

Quære whether Mayor and Ex-Mayor are "justices of the quorum." *Reg. v. Inhabitants of Llangian* (4 B. & S. 249).

(2.) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice.

[The effect of section 57 of the Act of 1835, and section 2 of 24 & 25 Vict. c. 75 (1861), is preserved in this clause. The precedence here given applies both severally and magisterially within the borough. It was held in *Ex parte Mayor of Birmingham* (3 E. & E., 222), that the precedence granted under the Act of 1835 was for social purposes only. Hence the amendment of the law which followed in the subsequent Act and renewed in this clause].

*Separate
commission
of peace.*

156.—It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace.

[The effect of section 98 of the Act of 1835 is preserved in this clause].

*Qualification
of borough
justice.*

157.—(1.) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.

[The word "any" used here is, of course, governed by other statutes. For instance, it is doubtful if a coroner can be a justice for the jurisdiction in which he acts as coroner. See hereon, *Dalt. Just.* c. 3, s. 10, and *Lamb Eiren*, lib. i., c. 14. The prohibition, by 5 Geo. 2, c. 18, s. 2, of any practising attorney, solicitor, or proctor acting as a county justice does not apply to boroughs having justices by charter, commission, or otherwise. Moreover a sheriff may not act as a justice during the year of his shrievalty (1 Mary, sess. 2, c. 8, s. 2).

See also subsection 1 of section 171 and notes thereon at page 149].

* It has been a subject of debate in a council meeting whether, in the event of the re-election of a person to the office of mayor, it is necessary for him to again take the oath as a justice of the peace (if he be not a permanent magistrate of the borough), when only half of the period for which he originally qualified to act has lapsed, but a strict interpretation of the statute seems to leave little room for doubt that if the office of mayor is held for two years in succession without the oath being again taken at the commencement of the second year, any magisterial acts which might be performed in the year after the vacation of office (as immediate ex-mayor) would be invalid, because of the application of the original oath of qualification only to the year of office being then entered upon and *one year* after.

(2) A justice for a borough shall not be capable of acting as such until he has taken the oaths * required to be taken by justices, except the oath as to qualification by estate, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

*Borough
Justices.*

[This declaration is contained in Form B, Part I. of the Eighth Schedule. See subsection 4 of clause 163 at page 143 *seq.*].

(3.) He must, while acting as such, reside in or within seven miles of the borough, or occupy a house, warehouse, or other property in the borough.

(4.) He need not be a burgess or have such qualification by estate as is required for a justice of a county.

[The effect of sections 98, 101, and 104 of the Act of 1835, section 3 of 6 & 7 Will. 4, c. 105 (1836), section 3 of 24 & 25 Vict. c. 75 (1861), section 6 of 31 & 32 Vict. c. 72 (1868), and section 2 of 34 & 35 Vict. c. 43 (1871), is preserved in this clause].

158.—(1.) A justice for a borough shall, with respect to offences committed and matters arising within the borough have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters arising within the county; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate.

*Jurisdiction
of borough
Justices.*

[Borough justices have no jurisdiction to grant licenses for inns or alehouses under 9 Geo. 4, c. 61, except in such boroughs as have separate courts of quarter sessions. *Candlish v. Simpson*, (30 L. J., M. C., 178).]

Penalties imposed by justices acting in and for a municipal borough having a separate commission of the peace, but no separate court of quarter sessions in respect of offences against the general law of the land are under 11 & 12 Vict. c. 43, s. 31, to be paid to the treasurer of the county and not of the borough. Penalties imposed by such justices under 9 Geo. 4, c. 61, and not awarded to the prosecutor under section 20 of that Act, are to be paid to the treasurer of the county, and not of the borough, notwithstanding the Municipal Corporations Act Amendment Act, 1861, s. 4. *Winn v. Mossman* (38 L. J. R., N. S. Ex. 200).

By 11 & 12 Vict. c. 43, s. 31, the amount of any penalty ordered to be paid by justices according to the Act is to be paid in the absence of specific directions in the statute on which the information shall have been framed to the treasurer

* The mayor must take oath as prescribed by 31 & 32 Vict. c. 72. This Act sets out three oaths—1, the oath of allegiance; 2, the official oath; and 3, the judicial oath. It names the persons to take the oath, and permits those excluded to make a declaration that he will faithfully discharge the duties of his office. Mayors and aldermen are not named to take official oaths. The oath of allegiance as a justice of the peace, and the judicial oath are imperative, they may be taken before any two justices or before two councillors of the borough. See 34 & 35 Vict. c. 48, s. 2.

Borough Justices.

of the county, riding, division, liberty, city, borough, or place for which the justices shall have acted. A borough formed part of the petty sessional division of the county within which it is situated, but had no separate court of quarter sessions, the justices for the county acting as justices for the borough concurrently with the mayor according to the Municipal Corporations Act (5 & 6 Will. 4, c. 76, s. 57), and there was a treasurer of the borough.—*Held* that the mayor, while acting as justice for the borough, was in the nature of a justice for the county with powers limited to a special locality, and the penalties imposed by the borough justices must, in the absence of directions in the penal statute, be paid to the county treasurer. *The Mayor, Aldermen, and Burgesses of Reigate v. Hart* (37 L. J. R., N. S., M. C., 70)].

(2.) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate.

[The effect of sections 101 and 128 of the Act of 1835, section 31 of 7 Will. 4 and 1 Vict. c. 78 (1837), and section 9 of 13 & 14 Vict. c. 91 (1850), is preserved in this clause].

Clerk to borough justices.

159.—(1.) The justices for a borough shall from time to time appoint a fit person to be their clerk, to be removeable at their pleasure.

[An information in the nature of *quo warranto* will not be granted against a clerk so appointed. See *Roy. v. Fox* (8 E. & B., 939)].

(2.) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.

(3.) The clerk to the justices shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions.

(4.) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(5.) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it.

(6.) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August one thousand eight hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices.

[The effect of section 102 of the Act of 1835, and section 5 of 24 & 25 Vict. c. 75 (1861), is preserved in this clause. Subsection 6 is a saving of the provisions

contained in the last-mentioned Act, and it is somewhat difficult to comprehend *Borough* the reason of its retention here, having regard to the fact that in the case of *Justices*. *Brown v. Evans* (33 L. J., N. S., 737) the judges commented very strongly upon its wording. The defendant held the two offices, and illegally so under the very Act containing the proviso as well as the Act of 1835, but judgment, both in the first instance and on appeal, passed for him under the saving character of the proviso].

160.—(1.) The council of a borough having a separate com- *Justices' room.*
mission of the peace shall provide and furnish a suitable justices' room with offices, for the business of the borough justices.

[It will be observed that a new designation, "justices' room,"—instead of police office—is introduced here].

(2.) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

[The effect of section 100 of the Act of 1835 is preserved in this clause].

*Stipendiary Magistrate.**

Stipendiary Magistrate.

161.—(1.) If the council desire the appointment of a sti- *Appointment of stipendiary magistrate.*
pendiary magistrate for the borough, they may present a petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven † years' standing.

(2.) He shall hold office during Her Majesty's pleasure.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council, that mentioned in the petition, as Her Majesty from time to time directs.

(5.) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.

* The following boroughs under this Act have stipendiary magistrates. Those marked thus (*) were appointed under section 99 of the Act of 1835; those marked thus (†) by local Acts:—

Birkenhead.†
Birmingham.*
Brighton.*
Cardiff.*
Kingston-on-Hull.*
Leeds.*
Liverpool.*
Manchester.*
Middlesbrough.*

Salford.†
Sheffield.*
Staffordshire Potteries.† (This district includes the boroughs of Burslem, Hanley, Longton, and Stoke-upon-Trent.
Swansea.*
Wolverhampton.†

† Five years was the standing enacted by the Act of 1835.

*Stipendiary
Magistrate.*

(6.) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.

(7.) More than one stipendiary magistrate may be appointed for a borough.

[The effect of section 99 of the Act of 1835 is preserved in this clause].

*Borough
Quarter
Sessions :
Recorder :
Clerk of
the Peace.*

Borough Quarter Sessions : Recorder ; Clerk of the Peace.

162.—(1.) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be holden in and for the borough.

(2.) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder.

(3.) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.

[The Act of 1835 did not include the words used in this subsection, and it was the professionally-stated opinion of the late Lord Chief Justice Cockburn and the late Lord Westbury, when attorney-general and solicitor-general respectively (given on September 19, 1856, to the town council of Newcastle-under-Lyme), that the Crown could not revoke or accept a surrender of a grant of a separate court of quarter sessions under the Act of 1835. The "terms" and "conditions" here provided for may, however, give such power].

(4.) Within ten days after receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

[The effect of sections 103 and 112 of the Act of 1835 is preserved in this clause].

The recorder.

163.—(1.) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years' standing to be recorder of the borough.

(2.) He shall hold office during good behaviour.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) He shall not act as recorder, or as a justice, until he has taken the oaths* required to be taken by a borough justice, and

* See note to subsection 2, clause 157, at page 139 *ante*, as to these oaths.

made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

*Borough
Quarter
Sessions :
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Clerk of the
Peace.*

[This declaration is contained in Form B, Part I. of the Eighth Schedule, and applies also to the borough justices (see subsection 2, clause 157, at page 139 ante). It is as follows :—"I, A.B., hereby declare that I will faithfully and impartially execute the office of recorder [or justice of the peace] for the borough of _____ according to the best of my judgment and ability"].

(5.) He shall have precedence in all places within the borough next after the mayor.

(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough ; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.

(7.) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made, as Her Majesty directs ; but the same may at any time be increased by resolution of the Council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.

(8.) A person may be appointed recorder of two or more boroughs conjointly.*

[The effect of sections 103 and 104 of the Act of 1835, section 3 of 6 & 7 Will. 4, c. 105 (1836), and section 2 of 34 & 35 Vict. c. 48 (1871), is preserved in this clause].

164.—(1.) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.

*The clerk of
the peace.*

[The town council are to appoint, but the recorder may remove the clerk of the peace for misconduct in his office by virtue of 1 W. & M., sess. 1, c. 21, s. 6. (and the following subsection). See *Reg. v. Hayward* (S. C., 31 L. J., M. C., 177)].

(2.) The clerk of the peace shall hold office during good behaviour.

(3.) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity or absence.

* At this time (December, 1882) one person holds three appointments as recorder and four persons two appointments each.

*Borough
Quarter
Sessions :
Recorder :
Clerk of the
Peace.*

(4.) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.

(5.) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled.

(6.) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements as he thinks proper, and any such table shall be of no validity until it is so confirmed.

[The effect of sections 103 and 124 of the Act of 1835 is preserved in this clause].

*Recorder to
hold court of
quarter
sessions.*

165.—(1.) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough.

(2.) He shall sit as sole judge of the court.

(3.) The court shall be a court of record, and shall have cognisance of all crimes, offences, and matters cognisable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts.

[The recorder has exclusive jurisdiction to try and determine appeals against orders of renewal made by the borough justices. See *Reg. v. Justices of Salop* (2 Q. B., 85), and *Reg. v. Justices of Suffolk*. He can also try an indictment for keeping a disorderly house, *Reg. v. Charles* (1 L. & C., 90). He may reserve a case for the consideration of the Court for Criminal Cases Reserved. *Reg. v. Masters* (1 Den. C. C. R., 332). He may hold his court during the time of the assizes in the same county. *Smith v. Regina* (13 Q. B., 738).]

Under the original County Commission of the Peace which, almost in its present form, was settled by a conference of judges in 1590, and commanded by the then Lord Chancellor to be used, any one or more justices have not only all the ancient power touching the peace which the conservators of the peace had at the common law, but also that whole authority which has been added thereto by subsequent statutes.—(*Vide* Pritchard's "Practice and Procedure at Quarter Sessions, &c."). Until the passing of the Act 5 & 6 Vict. c. 38, the justices in general and quarter sessions exercised jurisdiction over felonies with no limitation except that which sprung up, in practice, of abstaining from the more difficult and important cases, and sending them to the assizes. Modern public opinion, however, demanded the application, to intricate and important cases, of that knowledge and discrimination which could only be expected from the labour of a life devoted to legal pursuits, and which was not reasonably to

be sought for in the compass of individual magistrates however well informed and upright in purpose. Consequently the Act just referred to was passed. It provided as follows:—"That after the passing of this Act neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace, or at any adjournment thereof, try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas [altered to penal servitude by 20 & 21 Vict. c. 3, s. 6] for life, or for any of the following offences (that is to say),—

1. Misprision of treason :
2. Offences against the Queen's title, prerogative, person, or government, or against either House of Parliament :
3. Offences subject to the penalties of præmunire :
4. Blasphemy, and offences against religion :
5. Administering or taking unlawful oaths :
6. Perjury and subornation of perjury :
7. Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanour :
8. Forgery :
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern :
10. Bigamy, and offences against the laws relating to marriage :
11. Abduction of women and girls :
12. Endeavouring to conceal the birth of a child :
13. *Making against any provision of the laws relating to bankrupts and insolvents :*
14. Composing, printing, or publishing blasphemous, seditious or defamatory libels :
15. Bribery :
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person :
17. Stealing, or fraudulently taking, or injuring or destroying, records or documents belonging to any court of law or equity, or relating to any proceeding therein :
18. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments ;"

The 13th sub-clause was repealed by the Act 32 & 33 Vict. c. 62 (The Debtors' Act), and the offences enumerated therein were, by s. 20, deemed to be within the jurisdiction of quarter sessions, justices and recorders. The 24 & 25 Vict. c. 96, s. 87, precluded frauds by agents, bankers, or factors in embezzling money or selling securities, &c., entrusted to them under directions in writing, or chattels, or valuable security held for safe custody or special purposes (the offences of keeping and publishing of false accounts and destroying of documents by directors and officers of public companies are also included) being tried at any court of general or quarter sessions of the peace.

The sessions of the Central Criminal Court, and those of Middlesex, London, and Westminster, are subject to various regulations which differ from those prevailing in other parts of England].

(4.) But the recorder shall not, by virtue of his office, have power

(a.) To allow, apportion, make, or levy any borough rate ;
or

(b.) Subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance,

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apportionment, making, or levying of any rate whatsoever ; or

- (c.) To grant any licence or authority to any person to keep an inn, alehouse, or victualling house to sell exciseable liquors by retail ; or
- (d.) To exercise any power by this Act specially vested in the council.

[The effect of section 105 of the Act of 1835, and section 8 of 6 & 7 Will. 4, c. 105 (1836), is preserved in this clause].

Power to ap-
point deputy
recorder.

166.—(1.) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years' standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.

(2.) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

[The effect of section 8 of 6 & 7 Vict. c. 89 (1843) is preserved in this clause. See 32 & 33 Vict. c. 23, s. 1 (1869) ; and 35 & 36 Vict. c. 86, s. 7 (1872), in which a judge of any local court may appoint as deputy a barrister of not less than seven years' standing].

Powers of
mayor in
absence of
recorder and
deputy
recorder.

167.—(1.) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognisances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.

[The right of the mayor to adjourn the court when the Recorder of O—— had not put in an appearance for a considerable time after the hour appointed for the commencement of business, and had not sent any intimation of his probable absence or late arrival was disputed (by the recorder). The mayor, however, relied on the section of the statute incorporated in this clause as his authority for opening and closing the court, and in the end his right to do so in the exercise of his discretion was admitted by the recorder].

(2.) But nothing in this section shall authorize the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

[The effect of section 106 of the Act of 1835 is preserved in this clause].

Power for
recorder to
form a second
court.

168.—(1.) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days,

including the day of assembling, he may in his discretion, but subject to the provisions of this section, order a second court to be formed, and appoint by writing signed by him a barrister of five years' standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.

*Borough
Quarter
Sessions :
Recorder :
Clerk of the
Peace.*

(2.) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.

[It will be observed that a new style is introduced in this clause, "assistant recorder" instead of "assistant barrister" as in the previous statute].

(3.) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced.

(4.) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.

(5.) Where a second court is so formed, the clerk of the peace shall, on the request of the recorder, appoint an assistant, and the recorder shall appoint an additional crier for the second court.

(6.) The recorder shall not exercise the powers given by this section unless—

(a.) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised; and

(b.) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.

*Borough
Quarter
Sessions :
Recorder :
Clerk of the
Peace.*

(7.) Where a resolution of the council is so certified, the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.

[This duration of time for which the certificate may be in force was an amendment by 40 & 41 Vict. c. 17, s. 1 (1877), of 7 Will. 4 and 1 Vict. c. 19, s. 1 (1837)].

(8.) An assistant recorder, assistant clerk of the peace, and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.

[These fees are set out in the second paragraph of the Fourth Schedule as follows :—

Assistant Recorder and Officers of Second Court of Quarter Sessions.

For every day not exceeding two, or, by resolution of the council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder	-	-	-	-	-	Ten guineas.
To an assistant clerk of the peace	-	-	-	-	-	Two guineas.
To an additional crier	-	-	-	-	-	Half a guinea.

The remuneration is payable on a certificate from the recorder showing the amount due. (The remuneration is payable from the borough fund without an order from the council—Fifth Schedule, paragraph 3).

(9.) The powers given to the recorder by this section may be exercised by the deputy recorder.

(10.) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

[The effect of sections 1, 2, and 3 of 7 Will. 4 and 1 Vict. c. 19 (1837), and sections 1 and 2 of 40 & 41 Vict. c. 17 (1877), is preserved in this clause].

*Liability of
borough having
quarter sessions
for prosecutors'
expenses.*

169.—A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough.

[The effect of section 113 of the Act of 1835 is preserved in this clause. See *Reg. v. Treasurer of Oswestry* (12 Q. B., 239), as to the direction to the treasurer].

*Sheriff.**Sheriff.*

170.—(1.) The council of every borough being a county of itself, and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff.

Appointment of sheriff in counties of cities and counties of towns.

[The Sheriff of Oxford was first appointed under section 61 of the Act of 1835, but his duties are confined to executing the writs of the city courts. He has not the execution in the city of writs from the superior courts (see *Grainger v. Taunton*, 3 Bing. N. C. 64).

A sheriff may not act as justice during the year of his shrievalty (1 Mary, sess. 2, c. 8, s. 2).

The office of sheriff is not one of profit (see section 8 of 5 & 6 Vict. c. 104)].

(2.) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

(3.) The sheriff shall hold office until the appointment of his successor.

(4.) He shall have the same duties and powers as the sheriff or the person filling the office of sheriff in the respective borough or city would have had if the Act had not been passed.

[The effect of section 61 of the Act of 1835, and section 5 of 6 & 7 Will. 4, c. 105 (1836), is preserved in this clause. For jurisdiction of sheriff and his liability, see 40 & 41 Vict. c. 21, ss. 30 & 31; as to prisoners under sentence of death, see 28 & 29 Vict. c. 126, s. 58; 40 & 41 Vict. c. 21, s. 32, and 42 & 43 Vict. c. 1, s. 3].

*Coroner.**Coroner.*

171.—(1.) The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough: and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner.

Appointment, fees, &c. of borough coroner in boroughs having separate quarter sessions.

[The coroner is not required to be qualified by residence, estate, or otherwise, except that of being a "fit" person. As to ability of Coroners to be magistrates "The Lord Mayor for the Time being, is perpetual Coroner and Escheator within the said city of London and Liberties of Southwark, and the Coroner's Court is always held before him or his Deputy." Dyer 317, Stamf. lib. 2 cap. 31. Cro. Jac. 531, "Justice of Peace for London." And by 2 Chart. Jac. 1, "Justice of Oyer and Terminer." (See "Privilegia Londoni," by W. Bohn, 1273).

Whether in other cities the same privilege of justice and coroner extends is doubtful. See Ditt. Just. c. 3, s. 10, and Lamb Eiren, lib. 1 c. 14. The 31 & 35 Vict. c. 18, disqualifying practising attorneys within city or county wherein they practise, is silent as to office of coroner.

See also subsection 1 of section 157, and note thereon at page 138.

The Lord Chief Justice of the Queen's Bench is the principal coroner in the Kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm. 11 Rep. 57. By Stat. 4 Ed. 1, de officio Coronatoris, the office of coroner principally judicial. He is by virtue of his office a conservator of the King's peace, and becomes a magistrate by virtue of his appointment, having power to cause felons to be apprehended, whether an inquisition be found against them or not. (See "Lewis on Coroners," 2nd Ed., p. 30)].

Coroner.

(2.) The coroner shall hold office during good behaviour.

(3.) A vacancy in the office shall be filled up within ten days after it occurs.

(4.) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules.

[The effect of section 62 of the Act of 1835 and section 3 of 7 Will. 4 and 1 Vict. c. 68 (1837), is preserved in this clause. The remuneration to the coroner is set out in the Fourth Schedule, paragraph 3, as follows:—

Coroner.

To the borough coroner (subject to the provisions of any other Act relating to coroners) —

For every inquisition which he duly takes in the
borough - - - - - Twenty shillings.
and

For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition - - - - - Ninepence.

(This remuneration is not payable without an order from the council—Fifth Schedule, paragraph 4). The practice is for the coroner to present his account at each quarter sessions to the recorder who makes an order on the council for payment of the same].

Power of
borough
coroner to
appoint a
deputy.

172.—(1.) In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise.

(2.) The mayor or two justices for the borough shall on each occasion certify by writing signed by him or them the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.

[The effect of section 6 of 6 & 7 Will. 4, c. 105 (1836) is preserved in this clause.

It is sufficient cause for the appointment of a deputy that the coroner is holding another inquest. *Reg. v. Perkin* (7 Q. B., 165).

There is no restriction as to standing of the barrister.

An inquest commenced must be completed by deputy, who signs the inquisition in the name of the coroner, affixing his own name as his deputy].

Returns by
borough
coroners.

173.—On or before the first of February in every year the coroner shall send to the Secretary of State a return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was called upon to hold an inquest during the year ending on the then last thirty-first of December.

[The effect of section 63 of the Act of 1835 is preserved in this clause].

174.—(1.) Where a borough has not a separate court of quarter sessions no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner.

Coroner.
Acting of
county coroner
in borough.

(2.) That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within the county or district.

[The effect of section 64 of the Act of 1835 is preserved in this clause.

See 6 & 7 Vict. c. 12 as to holding inquests where place of death is unknown or inquest held where death occurs in another place than that in which the cause of death happened. See also *Reg. v. Ellis* (2 C. & K., 479).]

*Borough Civil Court.**

*Borough Civil
Court.*

175.—(1.) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years' standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court.

Judge of
borough civil
court where
there is a
recorder.

(2.) The recorder, if judge, may, in case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years' standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise.

(3.) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.

(4.) A court shall not be illegal, nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.

* The powers vested in borough civil courts are defined in succeeding sections, and particularly section 183. It was anticipated at the time of the passing of the Act of 1835 that there would be a revival of the civil courts and jurisdictions then in abeyance, but the establishment of new county courts by the 9 & 10 Vict. c. 95 (with their inexpensive procedure and the extensive powers conferred on them by recent Acts) have almost completely annulled the various borough jurisdictions. Only eighteen out of the 178 cities and boroughs scheduled in the Act of 1835 are now included in the annual Judicial Returns with respect to their civil jurisdiction, and of that number not more than a dozen can be said to have a publicly-recognised existence. At unfrequent intervals a suit is entered in the civil court of one or other of the boroughs not set out in the Judicial Returns; but so seldom does this occur, that the fact is hardly known outside the precincts of the court. The few tribunals which can boast an uninterrupted practice since 1835 have in a certain measure been reconstituted, and raised from the state of inefficiency and disorder into which they had fallen previous to that year, with the result of their now enjoying a deserved popularity with litigants such as distinguishes the Mayor's Court of London.

*Borough
Civil Court.*

(5.) The recorder, where judge, and the deputy judge, shall have such remuneration as the council fix by bye-law.

(6.) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years' standing or a solicitor of five years' practice, from time to time appointed for that purpose by the recorder by writing signed by him.

(7.) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years' standing or a solicitor of five years' practice, as the recorder appoints by writing signed by him.

[The effect of section 118 of the Act of 1835, section 9 of 6 & 7 Will. 4 c. 105 (1836), sections 32 and 33 of 7 Will. 4 and 1 Vict. c. 78 (1837), and 32 & 33 Vict. c. 23 (1869), is preserved in this clause].

Judge of
borough civil
court where
there is no
recorder.

176.—Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer.

[The effect of section 118 of the Act of 1835 is preserved in this clause. The officer appointed must look to the Borough Fund for his salary, and cannot maintain an action for arrears of it. *Addison v. Mayor, &c. of Preston* (12 Q. B., 108)].

Tenure of
judge.

177.—Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

[The effect of section 118 of the Act of 1835 is preserved in this clause].

Registrar and
other officers
and fees.

178.—(1.) Except where the town clerk acts as registrar, the council shall from time to time appoint a registrar of the borough civil court.

(2.) The council shall from time to time appoint other requisite officers and servants of the court.

(3.) The fees to be taken by the registrar and other officers of the court shall be from time to time fixed by the council, subject to the approval of the Secretary of State.

(4.) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835. *Borough Civil Court.*

[The effect of sections 119 and 124 of the Act of 1835 is preserved in this clause].

179.—(1.) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court. *Solicitors.*

(2.) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

[The effect of section 119 of the Act of 1835 is preserved in this clause. See *Reg. v. Mayor &c. of York* (3 Q. B., 550) as to subsection 2].

180.—(1.) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts. *Time of holding court.*

(2.) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs.

[The effect of section 9 of 6 & 7 Will. 4, c. 105 (1836), and section 2 of 2 & 3 Vict. c. 27 (1839), is preserved in this clause].

181.—Every personal action brought in a borough civil court shall be commenced by writ of summons. *Procedure.*

[The effect of section 3 of 2 & 3 Vict. c. 27 (1839) is preserved in this clause].

182.—(1.) Subject to the provisions of this Act, the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by rule revoke or alter any former rule. *Power for judge to make rules of procedure.*

[With respect to the practice of these courts of record, the result of the several enactments which have from time to time been passed on the subject seems to be that every judge of such court may from time to time make, alter, and revoke such rules for appointing the times for holding such court (provided that it shall be held for the trial of issue of fact and of law four times in each year, and with no greater interval between the holding of any two successive courts than four calendar months), for regulating the forms and manner of proceeding, the process, appearance, practice, and pleading in such courts, and for settling the reasonable fees of the attorneys of the court for business transacted therein, with a view to conducting the business of the court with most conve-

*Borough
Civil Court.*

nience and at the smallest reasonable expense; such rules, or any order revoking or altering such rules, only to be in force upon being allowed and confirmed by three of the judges of the superior courts at Westminster. It would also seem that these enactments have been construed by the judges to give the power of granting new trials, although it had formerly been held that this court could not give a new trial, and indeed had been laid down generally that inferior courts could not grant a new trial on the merits. (See "Grant on Corporations," page 491)].

(2.) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.

(3.) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

[The effect of section 118 of the Act of 1835, section 9 of 6 & 7 Will. 4, c. 105 (1836), and sections 1 and 3 of 2 & 3 Vict. c. 27 (1869), is preserved in this clause].

*Jurisdiction
of court.*

183.—(1.) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder is judge, or wherein a barrister of five years' standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

(2.) Any action wherein the title to land of any tenure, or to any tithe, toll, market, fair, or other franchise is in question, shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

[The effect of section 118 of the Act of 1835 is preserved in this clause].

*Saving for
borough
civil courts.*

184.—(1.) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge,

or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed.

*Borough
Civil Court.*

(2.) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872.

[The effect of the Act named (the 35 & 36 Vict. c. 86), so far as it affects borough courts, is comprised in this clause].

185.—It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions; and the same shall extend accordingly.

*Power to extend
jurisdiction
of borough
civil court.*

[The effect of section 35 of 7 Will. 4 and 1 Vict. c. 78 (1837) is preserved in this clause].

Borough Juries.

*Borough
Juries.*

186.—(1.) Every burgess* of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt or disqualified, be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.

*Provisions as
to juries in
boroughs.*

[The persons exempt or altogether disqualified from serving on juries are:— Aliens, unless the jury be *de medietate lingue*; persons attainted of treason or felony, or of any crime that is infamous, unless they have obtained a pardon; persons outlawed or excommunicated; and women, unless on a writ *de ventre inspiciendo*. Those who are merely exempted from serving on juries may be classed under the following heads—viz., peers; judges of the courts of record at Westminster; clergymen in holy orders; qualified Roman Catholic clergymen; qualified Protestant dissenting clergymen; serjeants, and barristers-at-law actually practising; doctors and advocates of the civil law actually practising; attorneys and proctors duly admitted and actually practising in the courts of law or equity, or in the ecclesiastical or Admiralty courts, who have taken out their annual certificates; officers in any of these courts actually executing the duties of their offices; coroners, gaolers, and keepers of houses of correction; members and licentiates of the Royal College of Physicians in London actually practising; surgeons who are members of one of the Royal Colleges of Surgeons, in London, Edinburgh, or Dublin, and actually practising; apothecaries certificated by the court of examiners of the Apothecaries' Company, and actually practising;

* Aldermen, councillors, the treasurer, and the town clerk, are not exempt from serving on juries for their borough, except they obtain their exemption under one or other of the descriptions noted at the end of the subsection. They are exempt from serving on the county juries.

*Borough
Juries.*

officers of the army and navy on full pay; pilots licensed by the Trinity House of Deptford, Hull, or Newcastle; masters of ships in the buoy and light service; and pilots licensed by the lord warden of the Cinque Ports, or under any Act of Parliament or charter in any other port; the household servants of Her Majesty; officers of the customs or excise; sheriffs' officers; high constables and parish clerks].

(2.) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, summon a sufficient number of persons, qualified and liable, to serve as grand jurors at the sessions.

(3.) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number of persons, qualified and liable, to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.

(4.) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.

(5.) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

(6.) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.

(7.) If any person, having been duly summoned * under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court), be liable to pay a fine of such amount as the court thinks fit.

(8.) If the person on whom any such fine is imposed refuses to pay it to the person authorized by the court to receive it, the court may, then or at the next sitting, by order of the court signed by the clerk of the peace or registrar, cause to be levied,

* The 33 & 34 Vict. c. 77 provides that six days' notice to serve on juries shall be sufficient.

by distress and sale of the goods of the person on whom the fine is imposed, the fine and the reasonable charges of the distress and sale. *Borough Juries.*

(9.) Nothing in this Act shall affect the Juries Act, 1870.*

[The effect of section 121 of the Act of 1835, and section 36 of 7 Will. 4 and 1 Vict. c. 78 (1837), is preserved in this clause.]

Exceptional Provisions.

Exceptional Provisions.

187.—The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission. *Grants to boroughs not affected by subsequent grants to counties.*

[The effect of 2 & 3 Phil. & Mary, c. 18, is preserved in this clause.]

188.—(1.) Until Her Majesty is pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any borough being a county of a city or county of a town, all bills of indictment for offences committed within that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorized by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, “to regulate the trial of causes, indictments, and other proceedings which arise within the counties of certain cities and towns corporate within the kingdom.” *Trial of offences committed in counties of cities and towns.*

[Sections 1 and 2 of the Act cited are as follows:—(1.) “Whereas there at present exists in the counties of cities and of towns corporate within this kingdom, an exclusive right, that all causes and offences which arise within their particular limits, should be tried by a jury of persons residing within the limits of the county of such city or town corporate; which ancient privilege, intended for other and good purposes, has in many instances been found by experience not to conduce to the ends of justice; And whereas it will tend to the more effectual administration of justice in certain cases, if actions, indictments, and other proceedings, the causes of which arise within the counties of cities and towns corporate, where tried in the next adjoining counties: In order, therefore, to remedy this mischief for the future, be it enacted, &c. That, from and after the passing of this Act, in every action whether the same be transitory or local which shall be prosecuted or depending in any of his Majesty’s Courts of Record at Westminster, and in every indictment removed into his Majesty’s Court of King’s Bench by writ of *certiorari*, and in every information filed by his Majesty’s Attorney or Solicitor-General, or by the leave of the Court of King’s Bench, and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of *mandamus*, if the *venue* in such action, indictment, or information be laid in the county of any city or town corporate within that part of Great Britain called England, or if such writ of *mandamus* be directed to any person or persons, body politic and corporate, that it shall and may be lawful for the court in which such action, indictment, in-

* The 33 & 34 Vict. c. 77.

Exceptional Provisions.

formation or other proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, indictment, information or proceeding, to be tried by a jury of the county next adjoining to the county of such city or town corporate, and to award proper writs of *venue* and *distringas* accordingly, if the said court shall think it fit and proper to do so."

(2.) "And be it further enacted by the authority aforesaid, that it shall and may be lawful for any prosecutor or prosecutors to prefer his, her, or their bill or bills of indictment, for any offence or offences committed, or charged to be committed, within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate, sworn and charged to inquire for the King, for the body of such adjoining county at any sessions of oyer and terminer, or general gaol delivery; And that every such bill of indictment found to be a true bill by such jury shall be valid and effectual in law, as if the same had been found to be a true bill by any jury sworn and charged to inquire for the King for the body of the county of such city or town corporate."

Held, that the court may direct an action the *venue* of which was laid in the corporate district to be tried in the adjoining county. *Cole v. Gane* (3 D. & L., 369).

Local venue in civil actions was abolished by Order XXXVI., Rule 1, of the Judicature Act, 1875.

The jurisdiction of the assizes is not affected by the grant of a court of quarter sessions to a borough. *Reg. v. Holden* (8 C. & P. 656)].

(2.) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.

[The effect of section 109 of the Act of 1835, and 38 Geo. 3, c. 52, is preserved in this clause].

The Sixth Schedule is as follows :—

COUNTIES TO WHICH CERTAIN BOROUGHS ARE TO BE CONSIDERED ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

Berwick-upon-Tweed	Northumberland.
Bristol	Gloucestershire.
Chester	Cheshire.
Exeter	Devonshire.
Kingston-upon-Hull	Yorkshire.
Newcastle-upon-Tyne	Northumberland.

Jurisdiction
in places
separated from
borough.

189.—Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognisable by a justice or by the quarter sessions having jurisdiction within that place shall be cognisable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate, in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.

[The effect of section 30 of 7 Will. 4 and 1 Vict. c. 78 (1837) is preserved in this clause].

PART IX.

POLICE.

*Watch Committee ; Constables.**Watch
Committee ;
Constables.*

190.—(1.) The council shall from time to time appoint, for such time as they think fit, a sufficient number not exceeding one third of their own body, who, with the mayor, shall be the watch committee.

Council to
appoint watch
committee.

[The limit here prescribed was absent from the Act of 1835, the council being empowered to appoint the mayor and a *sufficient number* of their own body. The practice in many boroughs was to appoint the whole of the council as the "Watch Committee"].

(2.) The watch committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present.

[The effect of section 76 of the Act of 1835 is preserved in this clause].

191.—(1.) The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables.

Appointment,
duties, and
powers of
borough
constables.

(2.) A borough constable shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has and is liable to for the time being in his constablewick, at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act.

[As to acting within the county in which the borough is situate, see *Mellor v. Leather* (1 E. & B., 619). As to powers and how far they extend, see *Reg. v. Crompton* (5 Q. B. D. 341)].

*Watch
Committee ;
Constables.*

(3.) The watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(4.) The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same.

(5.) When a borough constable is so dismissed, or ceases to belong to the constabulary force of the borough, all powers vested in him as a constable by virtue of this Act shall immediately cease.

(6.) Nothing in this section shall interfere with the operation of an Act of the session of the third and fourth years of Her Majesty's reign "to amend the Act for the establishment of county and district constables*"; and throughout that Act a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

[The effect of sections 76 and 77 of the Act of 1835 is preserved in this clause].

*Quarterly
returns as
to borough
constables.*

192.—The watch committee shall, on the first of January, the first of April, the first of July, and the first of October in every year, send to the Secretary of State a copy of all rules from time to time made by the watch committee or the council for the regulation and guidance of the borough constables.

[The effect of so much of section 86 of the Act of 1835 as has not been repealed and 21 & 22 Vict. c. 67 (1858) is preserved in this clause].

*Power for
constables to
apprehend
disorderly
persons, &c.*

193.—A borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch-house, in order that he may either be secured until he can be brought before a justice, or where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice.

[The effect of section 78 of the Act of 1835 is preserved in this clause].

* The 3 & 4 Vict. c. 83.

194.—If a borough constable is guilty of neglect of duty, or of disobedience to a lawful order, he shall for every such offence be liable on summary conviction to imprisonment for any time not exceeding ten days, or, in the discretion of the court, to a fine not exceeding forty shillings, or to be dismissed from his office.

Watch Committee ; Constables.
Penalties on constables for neglect of duty

[The effect of section 80 of the Act of 1835 is preserved in this clause].

195.—(1.) If any person assaults or resists a borough constable in the execution of his duty, or aids or incites any person so to assault or resist, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.

Penalty for assaults on constables.

[This subsection is equivalent to a repeal of sec. 20 of the Police of Towns Act (10 & 11 Vict. c. 89), and sec. 12 of the Prevention of Crimes Act (34 & 35 Vict. c. 112), and reduces and limits the power of justices in cities and boroughs in cases of assaults on constables to the penalty named, recoverable as provided by sec. 5 of 42 & 43 Vict. c. 49 (Summary Jurisdiction Act), with alternative of one month's imprisonment with or without hard labour in default of payment. In counties sec. 12 of the Prevention of Crimes Act still continues in force, which for a similar offence provides a penalty not exceeding £20, or, in the discretion of the court, in default of payment, imprisonment with or without hard labour, for a term not exceeding six months. Section 81 of the Act of 1835 is in the terms of the above, so that intermediate legislation on this subject has been disregarded].

(2.) But nothing in this section shall prevent any prosecution by way of indictment against any such offender, except that he shall not be prosecuted both by indictment and in a summary manner for the same offence.

[The effect of section 81 of the Act of 1835 is preserved in this clause].

Special Constables.

Special Constables.

196.—(1.) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.

Appointment of special constables.

(2.) Every such special constable shall make a declaration to the effect of the oath set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, “for amending the laws relative to the appointment of special constables, and for the better preservation of the peace,” and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act.

*Special
Constables.*

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

(4.) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules.

[The effect of section 83 of the Act of 1835, section 12 of 31 & 32 Vict. c. 72 (1868), section 8 of 17 & 18 Vict. c. 102 (1854), and 1 & 2 Will. 4, c. 41 (1831), is preserved in this clause. See *Reg. v. Hulton* (13 Q. B., 592).

The remuneration (which may not be paid without an order from the council) referred to in subsection 6 is set out in paragraph 4 of the Fourth Schedule, and is as follows :—

Special Constables.

To a special constable, for every day during which he is	} Three shillings and sixpence].
called out to act as such 	

Watch Rate.

Levy of watch
rate.

Watch Rate.

197.—(1.) Where at the commencement of this Act any rate might be levied in a borough, or in any part of a borough, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, the council may from time to time make and levy a watch rate on the occupiers of all hereditaments within such parts of the borough as are watched by day and by night, and as are from time to time, by order of the council, declared liable to watch rate.

(2.) The watch rate shall be made on an estimate of the net annual value of the several hereditaments rated thereto, that is to say, of the rent at which, one year with another, they might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses necessary to maintain them in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rentcharge (if any), being paid by the tenant.

(3.) The watch rate may be made by one rate made yearly, or by two or more rates made half-yearly or otherwise, and may be of any amount, in the discretion of the council, not exceeding

in any year eightpence in the pound on the net annual value of *Watch Rate*. the hereditaments rated thereto.

[See hereon 22 & 23 Vict. c. 32, s. 6].

(4.) For the purposes of the watch rate the council and all persons concerned, including overseers, shall have all powers given to them in respect of the borough rate for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case admits.

(5.) The provision of this Act relating to orders of vestries for the rating, in some cases, of owners, instead of occupiers, shall extend to the watch rate.

(6.) Nothing in the foregoing provisions of this section (except the general power to levy a watch rate) shall apply to any borough in which the borough fund is sufficient with the aid of the amount only of watch rate which could for the time being be raised therein under the Municipal Corporations Act, 1835, and without the aid of any borough rate, to defray the expenses of the constabulary force of the borough, with all other expenses legally payable out of the borough fund; but nothing in the present provision shall affect any benefit or right reserved by by Part X., or make the borough fund liable to any expenses with which it would not be otherwise chargeable.

(7.) Nothing in this section shall affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police.

(8.) Nothing in this section shall make liable to watch rate any hereditaments exempted by any local Act from payment of watch rate.

(9.) Nothing in this section shall alter the comparative liability to watch rate of any hereditaments which are under any local Act in respect of any watch rate entitled to any deduction from, or chargeable with any increase on, an equal pound rate; but the like comparative deductions and increased charges shall be made under this section.

[The effect of section 92 of the Act of 1835, and 2 & 3 Vict. c. 28 (1839), is preserved in this clause. The notes and comments following the clauses which deal with the borough fund (pages 125 to 127 *ante*) may be referred to here].

198.—(1.) Where part only of a parish is liable to watch rate, the overseers shall not pay out of the poor rate the amount of the watch rate charged by the council on that parish, but Watch rate is divided parish.

Watch Rate. shall make a separate rate or assessment on the part or parts only of the parish liable to watch rate; which rate shall be made in like manner and under like regulations and with like means and remedies for recovery thereof as in the case of a rate levied in respect of the contribution towards a borough rate.

(2.) No such separate rate shall be demanded, collected, or payable until it has been allowed by two justices usually acting in and for the borough and has been published, as a poor rate is by law required to be allowed and published.

(3.) Any person who thinks himself aggrieved by such a separate rate may appeal to the recorder at the next quarter sessions for the borough, or if there is none to the next court of quarter sessions for the county wherein the borough is situate, or whereto it is adjacent; and the recorder or court shall hear and determine the same, and shall award relief in the premises as in cases of appeal against a poor rate.

(4.) Every such separate rate may be of the rate in the pound necessary for raising the sum charged by the council, but not exceeding twopence in the pound beyond the rate in the pound at which the council have computed the watch rate charged by them.

(5.) The overseers shall account for money collected under such a separate rate as for money collected under a poor rate; and if there is a surplus in their hands, they shall pay it to the treasurer, to go to the borough fund, to the credit of the place for which the rate was made, and in part payment of the next watch rate laid on that place by the council.

(6.) The council or a committee appointed for this purpose, on application on behalf of any person rated to such a separate rate to be discharged therefrom, and on proof of his inability through poverty to pay the amount charged on him, may order that he be excused from the payment thereof, and may strike out his name therefrom; and the sum at which he was rated shall not thereafter be collected, nor shall any person be charged with it or be liable to account for it or for omitting to collect or receive it.

(7.) The overseers making any such separate rate may, by warrant from two justices usually acting in and for the borough, levy on every person refusing to pay the rate the amount charged on him, with the costs and charges of recovering and enforcing payment thereof, to be ascertained by the justices, by

distress and sale of the offender's goods, rendering to him the *Watch Rate*.
 overplus; and in default of such distress two justices may
 commit him to prison, there to remain without bail until
 payment of the amount and arrearages.

[The effect of sections 2, 3, 4, 5, 6, and 7 of 8 & 9 Vict. c. 110 (1845) is
 preserved in this clause].

199.—Any warrant required for the levy or collection of a *Warrant for*
 watch rate or separate rate may be issued by the mayor, signed *levy of watch*
 by him, and sealed with the corporate seal. *rate.*

[The effect of section 5 of 6 & 7 Will. 4, c. 104 (1836) is preserved in this
 clause].

200.—All money raised by a watch rate, or by a separate *Watch rate*
 rate as last aforesaid, shall go to the borough fund. *to go to*
borough fund.

[The effect of section 92 of the Act of 1835 is preserved in this clause].

PART X.

FREEMEN.

Freemen.

Definition of
freeman.

201.—In this Part the term freeman includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of freemen or of burgesses.

[The opinions of two learned writers as to the qualifications of a “freeman” or “burgess” have been already quoted (see page 5), but another and no less valuable authority* thus intelligibly defines a “townsman” or “freeman,”—“They were deemed townsmen who had a settled dwelling in the town, who merchandised there, who were of the *hans* (*hans-hus*) or hanse-house” (being a designation for the hall of the Common Mercatory Guild similar to that which formed the germ of the institutions of the *Hanse Towns*), “who were in scot and lot, and who used and enjoyed the liberties and free customs of the town.” The freedom of a borough was obtained under a variety of forms, which, however, may be included under the following general titles,—

Gift by the Governing Body,
Purchase,
Birth,
Marriage,
Servitude,
Membership of Trade Guilds, and
Possession or Occupancy of House or Land Property].

Freedom
not by gift
or purchase.

202.—No person shall be admitted a freeman by gift or by purchase.

[The effect of section 3 of the Act of 1835 is preserved in this clause].

The freemen's
roll.

203.—The town clerk of every borough for which at the commencement of this Act there is a Freemen's Roll shall continue to keep a list, called the Freemen's Roll.

[The effect of section 5 of the Act of 1835 is preserved in this clause. The Roll should contain the following class of persons:—

1. All persons who on the 9th of September, 1835, had been admitted as burgesses or freemen.
2. All persons who were entitled on the 9th of September, 1835, to have been admitted and who have since been admitted.
3. All persons who since the 9th of September, 1835, have become entitled to be and have been admitted in respect of birth, servitude, or marriage. (*Rawlinson's Municipal Corporations*, p. 7)].

* Madox—Firma Burgi, p. 269.

204.—Where a person is entitled to be admitted a freeman *Freemen.* for the purposes of this Part in respect of birth, servitude, or marriage, and claims accordingly, the mayor shall examine into the claim, and on its being established the claimant shall be admitted and enrolled by the town clerk on the Freemen's Roll. *Admission to freedom.*

[The effect of section 5 of the Act of 1835, and section 27 of 7 Will. 4 & 1 Vict. c. 78 (1837), is preserved in this clause.]

The mayor must examine and decide all claims with reference to the charter and local customs and usages of each borough. See the *Helleston* case (2 Doug. El. ca. 35), and the *Derby* case (3 Doug. El. ca. 287, 304).

Servitude must be under binding deed duly stamped (not necessarily an indenture), and period of service be in accordance with custom of borough. (*Re v. East Bridgeford*, S. C. 133).

A claim may be made and admission allowed as late even as the day of election. See the *Okehampton* case (1 Frazer, 166).

When once admitted and enrolled a party can be removed only by the High Court of Justice.

See the cases relating to apprenticeships generally for qualifications and claims by servitude].

205.—(1.) Every person who had before the passing of the Municipal Corporations Act, 1835, been admitted a freeman, or if that Act had not been passed might have been so admitted otherwise than by gift or purchase, and

Reservation of rights of property to freemen and others.

(2.) Every person who for the time being is—

(a.) An inhabitant of a borough, or

(b.) Wife, widow, son, or daughter of a freeman, or

(c.) Husband of a daughter or widow of a freeman, or

(d.) Bound an apprentice,—

shall, subject to the provisions of this Part, have and enjoy and be entitled to acquire and enjoy the same share and benefit of the hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any property held in whole or in part for any charitable uses or trusts, as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

[The effect of sections 2 and 3 of the Act of 1835 is preserved in this clause. All persons who before the passing of the Act of 1835 were entitled to and possessed of corporate benefits, by virtue of any usage, custom, bye-law or otherwise are confirmed in them. See *Hopkins v. Mayor &c. of Swansea* (4 M. & W. 621, 643); affirmed in the Exchequer Chamber, M. & W., 901. Certain land on which the resident freemen had the right to turn stock was taken compulsorily under the Lands Clauses Act. *Held* that the purchase money should be invested in other land for the same purpose, and that till this could be done it should be invested and the dividends paid to the resident freemen at the same time in each year as they had been accustomed to enjoy their common rights. *Nash v. Coombs* (L. R., 6 Eq., 51).

Freemen.

In an action by some (on behalf of all) of the freeman of a borough to establish the rights of all the individual freeman to share for their private benefit the net proceeds of certain properties vested in the Corporation. *Held*, on demurrer, that the effects of the saving of rights in sect. 2 of *The Municipal Corporations Act* of 1835 was to legalise the beneficial interests therein mentioned, without reference to the legality of their origin, and in particular, to obviate any objection which might otherwise arise in respect of the tendency towards a perpetuity of any such beneficial interest.

An action to establish such rights as aforesaid may be brought by parties claiming to be entitled, without an information by the Attorney-General.

In such an action it was held on demurrer that in order to enable the plaintiffs to avail themselves of such saving rights as aforesaid, it was sufficient for them after stating the title of the Corporation by charter or otherwise to the property in question, to aver that at the time of the passing of the Act the rents, tolls, and profits claimed by them were not, nor ever had been, nor ought to have been held and applied to public purposes, but they were and always had been held and applied for the particular benefit of the freemen, and without pleading that such rents, tolls and profits had been enjoyed or acquired by virtue of any specific statute, charter or bye-law or custom, or expressly to aver that any custom to such effect as aforesaid existed. *Prestney v. Mayor and Corporation of Colchester and the Attorney-General*, 21 Ch. Div. 111].

Limit of value
and saving as
to conditions
precedent.

206.—(1.) The total amount to be divided among the persons whose rights are by the last foregoing section reserved shall not exceed the surplus remaining after payment of the interest of all lawful debts chargeable on the property out of which the sums so to be divided have arisen, together with the salaries of municipal officers and all other lawful expenses which, on the fifth of June one thousand eight hundred and thirty-five, were defrayed out of or chargeable on the same.

(2.) Where, if the Municipal Corporations Act, 1835, or this Act, had not been passed, any such person would have been liable by statute, bye-law, charter, or custom, to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant thereof, in consideration of his freedom, or of his or her title to those reserved rights, or there was any condition precedent to any person being entitled to those rights, he or she shall not have any benefit in respect of those rights until he or she has paid that fine, fee, or sum to the treasurer on account of the borough fund, or has fulfilled that condition, as far as it is capable of being fulfilled according to the provisions of this Act.

[The effect of section 2 of the Act of 1835 is preserved in this clause].

Saving for
power to
question right.

207.—Nothing in this Act shall strengthen or confirm any claim, right, or title of any freeman or of any person to the benefit of any right in this Part reserved, but the same may in every case be brought in question, impeached, and set aside, as if this Act had not been passed.

[The effect of section 2 of the Act of 1835 is preserved in this clause].

208.—(1.) Nothing before in this Part contained shall apply to any claim, right, or title of a freeman or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or for the use or benefit of any borough or body corporate. *Freemen.*
Reservation
of beneficial
exemptions
to freemen
and others.

(2.) No person shall have any such discharge or exemption except a person who, on the fifth of June, one thousand eight hundred and thirty-five, was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son or daughter of a freeman, or was bound an apprentice; and every such person shall be entitled to the same discharge or exemption as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

(3.) But nothing in this Act shall affect the right of any person claiming such discharge or exemption otherwise than as inhabitant or freeman, or member of a municipal corporation, or widow or kin of such an inhabitant, freeman or member.

[The effect of section 2 of the Act of 1835, and section 9 of 6 & 7 Will. 4, c. 104 (1836), is preserved in this clause].

209.—(1.) Every person who, if the Municipal Corporations Act, 1835, had not been passed, would have enjoyed as a freeman, or might thereafter have acquired, in respect of birth or servitude, as a freeman, the right of voting in a parliamentary election, shall be entitled to enjoy or acquire that right as if that Act or this Act had not been passed. Reservation of
parliamentary
franchise, &c.

(2.) No stamp duty shall be chargeable on the admission of any person as a freeman in respect of birth or servitude in a parliamentary borough.

(3.) The town clerk shall do all things appertaining by law to the registration of freemen for parliamentary elections.

[The effect of section 4 of the Act of 1835, and 1 & 2 Vict. c. 35 (1838), is preserved in this clause].

PART XI.

GRANT OF CHARTERS.

*Grant of
Charters.*

Power to Crown
in granting
charter to
borough to
extend to it the
provisions of
the Municipal
Corporations
Acts.

210.—If on the petition to the Queen of the inhabitant householders of any town or towns or district in England, or of any of these inhabitants, praying for the grant of a charter of incorporation, Her Majesty, by the advice of Her Privy Council, thinks fit by charter to create such town, towns, or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for Her Majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporations Acts.

[The effect of section 3 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause.

The powers of the Crown in regard to the grant of charters of incorporation, and the mode in which these powers are to be exercised, are, however, so important, that it will be useful to state in a summary manner the propositions affirmed by the Court of Queen's Bench in the leading case on the subject—that of the incorporation of Manchester (reported as *Rutter v. Chapman*, (8 M. & W., 1). It was there held—

1. That the grant of a charter of municipal incorporation is still an exercise of the common law prerogative of the Crown, although such charter invests the corporation with the functions conferred by the Act upon the then existing municipal corporations.

2. That the Crown may grant the charter to a part only (to be defined therein) of a town or borough, and need not grant it to the whole of the inhabitants of such town or borough, although the prayer of the petition is for a grant of a charter of incorporation to the inhabitant householders of the said borough.

3. That a petition, to be within the meaning of the Acts, need not proceed from the majority of the inhabitant householders of the place or of the male inhabitant householders of the place.

4. That whether such petition was, under all the circumstances, the petition of the inhabitant householders within the meaning of the Acts, is a question of fact for a jury.

5. That when the whole number of the inhabitant householders was 48,000, and a petition was presented to the Crown signed by 4,000 in favour of a grant of a charter of incorporation, and another was subsequently presented by 6,000 against it, the jury were quite right in their verdict, that the former petition expressed the wish of the inhabitant householders

within the meaning of the Acts; (the direction of the learned judge at the trial being that, notwithstanding such last petition, the Crown had power, in his opinion, to grant the charter by virtue of the first petition, which direction was also correct).

6. That the Crown, in the charter, besides defining the district within which the powers and jurisdiction of the corporation are to be exercised, may, by its common law prerogative, appoint the number and set out the wards of the new borough.

7. That a charter so granted was valid (having been accepted); but that the determination of the Privy Council to advise the Crown to grant the charter is not decisive of the question as to the sufficiency of the petition in favour of the charter.

8. That the Crown may, in the charter, delegate to an individual the power of appointing the first members of the corporate body; or may at all events appoint a person to ascertain who are the individuals possessed of the qualifications which the corporations are to have; in other words, who are to be burgesses; and may appoint, in the charter, another person to revise the list of burgesses, and to act as the returning officer at the first election of officers under the charter.

The Crown has always possessed the privilege of creating corporations and conferring franchises; but when privileges and powers are to be conferred which are not recognised by the common or statute law, an Act of Parliament is necessary. Section 210, although it does not at all abridge the common law prerogative of the Crown, prevents it granting charters of incorporation with the powers conferred by this Act, save with the advice of the Privy Council, and on petition by the inhabitant householders.*

The court will not grant a *quo warranto* against an individual to try the legality of a charter of municipal incorporation. *Reg. v. Jones* (3 L. T., N. S., 503).

The court will not inquire into the validity of a charter, but will act upon it as being valid until proper proceedings are taken to set it aside. A charter of incorporation, granted under 7 Will. 4 and 1 Vict. c. 78, to a borough previously possessing a body corporate, but not named in the schedules to 5 & 6 Will. 4, c. 76, confers upon it the same powers and privileges as if it had been so named. The corporation established under the charter is identical with that previously existing although the governing body may be different, and the property of the old corporation becomes vested in the new by virtue of the charter.—*Attorney-General v. Avon (Port-reeve, Aldermen, and Burgesses)*. 9 Jur., N. S., 1117.

The power of the Crown to grant a charter of incorporation under 1 Vict. c. 78, s. 49, attaches on the presentation of a petition under the Act, and whatever happens afterwards only affects its discretion. Such a petition must be a petition representing the wishes of the majority of the inhabitant householders, and this is a question of fact for the jury.—*Seem*, that "inhabitant householders" in this section includes compound householders (under 13 & 14 Vict. c. 95) as well as ratepayers.—*Reg. v. Mayor, Aldermen, and Burgesses of Aberavon* (13 W. R., 90)].

211.—(1.) Every petition for a charter under this Act shall be referred to a Committee of the Lords of Her Majesty's Privy Council (in this Part called the Committee of Council).

(2.) One month at least before the petition is taken into consideration by the Committee of Council, notice thereof and of the time when it will be so taken into consideration shall be published in the *London Gazette*, and otherwise in such manner

Reference to Committee of Council, and notice of petition for charter.

* "Under the word 'persons,' says a learned commentator upon the Act of 1835, it is apprehended that a corporation would be included, and would consequently be entitled to the protection afforded by this section." In several cases the word "person," in a similar clause as to actions, has been held to include an incorporated company.

*Grant of
Charters.*

as the Committee direct for the purpose of making it known to all persons interested.

[The effect of section 4 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause].

Power by
charter to
settle wards,
and by fixing
dates and
otherwise to
adapt the
Municipal
Corporations
Acts to first
constitution of
new borough.

212.—(1.) Where Her Majesty by a charter extends the Municipal Corporations Acts to a municipal borough it shall be lawful for Her Majesty, by the charter, to do all or any of the following things :

- (a.) To fix the number of councillors, and to fix the number and boundaries of the wards (if any), and to assign the number of councillors to each ward ; and
- (b.) To fix the years days and times for the retirement of of the first aldermen and councillors ; and
- (c.) To fix such days times and places, and nominate such persons to perform such duties, and make such other temporary modifications of the Municipal Corporations Acts, as may appear to Her Majesty to be necessary or proper for making those Acts applicable in the case of the first constitution of a municipal borough.

(2.) The years days times and places fixed by the charter, and the persons nominated therein to perform any duties, shall, as regards the borough named in the charter, be respectively substituted in the Municipal Corporations Acts for the years, days, times, places, officers, and persons therein mentioned, and the persons so nominated shall have the like powers, and be subject to the like obligations and penalties, as the officers and persons mentioned in those Acts for whom they are respectively substituted.

(3.) Subject to the provisions of the charter authorized by this section, the Municipal Corporations Acts shall, on the charter coming into effect, apply to the municipal borough to which they are extended by the charter ; and, where the first mayor aldermen and councillors or any of them are named in the charter, shall apply as if they were elected under the Municipal Corporations Acts, and, where they are not so named, shall apply to their first election.

[The effect of section 5 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause].

Scheme for
continuance or
abolition of and
adjustment of

213.—(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to

extend the Municipal Corporation Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

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Charters.*

rights of
existing local
authority and
officers.

(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.

(3.) The scheme, when settled by the Committee of Council, shall be published in the *London Gazette*, and shall not be of any effect unless confirmed as herein-after mentioned.

(4.) Where, within one month after the publication of the scheme in the *London Gazette*, a petition against it by any local authority affected thereby, or by not less than one twentieth of the owners and ratepayers of the borough (such twentieth to be one twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture) has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the

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Charters.*

Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this Part means a sanitary authority* (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts), also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, and not being a school board, and having powers of local government and of rating for public purposes.

(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

[The effect of section 6 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause].

Supplemental
provisions as
to scheme
and charter.

214.—(1) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c. Act, 1861†, to the Board of Trade.

(2.) A scheme shall in every case provide for placing the

* Sections 5 to 12 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), enacts that (subject to certain provisions and exceptions) the council of every municipal borough shall be constituted the Urban Sanitary Authority of the borough. The following city and boroughs (thirteen in number) have a local body distinct from the council acting as the Urban Sanitary Authority:—Banbury, Blandford, Colne, Cambridge, Chippenham, Faversham, Folkestone, Launceston, Lyme Regis, Lymington, Morpeth, Oxford and Wenlock.

† The 24 & 25 Vict. c. 47.

new borough within the jurisdiction of the council as the *Grant of Charters*.
sanitary authority.

(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed.

The Seventh Schedule is as follows :—

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the *London Gazette*, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

(4.) If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly.

[The effect of section 7 of 40 & 41 Vict. c. 69 (1877), and section 2 of 24 & 25 Vict. c. 47 (1861), is preserved in this clause].

215.—Nothing in any scheme or in the Municipal Corporation Acts shall authorize the establishment in a borough to which a charter is granted under this Act of a new separate police force not consolidated with the county police force, unless the district incorporated by the charter contained twenty

Provision as to police force in new borough.

*Grant of
Charters.*

thousand inhabitants or upwards, according to the census taken next before the date of the incorporation.

[The effect of section 8 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause. The number of cities and boroughs which have a separate police force in 1882 is 158; those with a population under 5,000 and therefore not entitled to a Treasury contribution (see 19 & 20 Vict. c. 69, s. 17) in aid of the maintenance, &c., number 25].

*Validity of
charters.*

216.—(1.) A charter creating a municipal borough which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this Act, shall after acceptance be deemed to be valid and within the powers of this Act and Her Majesty's prerogative, and shall not be questioned in any legal proceeding whatever.

(2.) Every such charter shall be laid before both Houses of Parliament within one month after it is granted, if Parliament is then sitting, or if not, within one month after the beginning of the then next sitting of Parliament.

[The effect of section 9 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause].

*Power to
settle scheme in
case of recent
charters.*

217.—Where a charter was granted to a borough within seven years before the fourteenth of August one thousand eight hundred and seventy-seven, the Committee of Council, on the petition to the Queen of the council of the borough, or of any existing local authority whose district comprises the whole or any part of the area of the borough, either with or without any adjoining or other place, may settle a scheme under this Act in like manner as if the petition for the grant of a charter to the borough had been referred to the Committee of Council after the commencement of this Act, and the provisions of this Act with respect to a scheme shall apply accordingly, with the necessary modifications; and if within one month after the publication of the scheme in the *London Gazette* a petition against the scheme from the council of the borough has been received by the Committee of Council and is not withdrawn the scheme shall require the confirmation of Parliament.

[The effect of section 13 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause].

*Power to
amend scheme.*

218.—(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned),

or a local authority affected by the scheme, petition the Queen *Grant of Charters.* for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to Her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

PART XII.

*Legal
Proceedings.*

LEGAL PROCEEDINGS.

Prosecution of
offences and
recovery of
fines.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.

[Three months was the limit enacted by section 127 of the Act of 1835].

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions.

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

[The effect of sections 127 and 131 of the Act of 1835 is preserved in this clause].

Exclusion of
certiorari.

220.—A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court.

[The effect of section 132 of the Act of 1835 is preserved in this clause. An order of the borough quarter sessions in the case of an appeal against a borough rate (in the nature of a county rate) cannot be removed by *certiorari*. *Reg. v. Justices of Ripon* (7 A. & E., 417)].

Application of
penalties in
quarter sessions
boroughs.

221.—(1.) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be

recovered for and adjudged to be paid to the treasurer of the ^{Legal} borough. *Proceedings.*

[This would apply to penalties for obstructing railway officers in their duties. See *Attorney-General v. Moore* (3 Ex. D. 276); also to certain fines under the Parliamentary and Municipal Registration Act. See section 3 of that Act (41 & 42 Vict. c. 26).]

Where a conviction is made under statutes which contain no directions for the payment of the penalties to any person the clerk of the division for which the justices usually act must pay them over to the treasurer of the county or the borough, as the case may be. *Held* that they must be paid to the treasurer of the county if the borough had not a separate court of quarter sessions. See *Mayor of Reigate v. Hart* (L. R., 3 Q. B., 244), and *Winn v. Mossman* (L. R., 4 Ex., 292)].

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

- (a.) Directs payment thereof to the informer or to any person aggrieved; or
- (b.) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or
- (c.) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

[The effect of section 126 of the Act of 1835 is preserved in this clause].

222.—Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, “for the more speedy return and levying of fines, penalties, and forfeitures, and recognisances estreated;” and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

Duties of clerk of peace as to fines and forfeitures.

[The effect of section 5 of 20 & 21 Vict. c. 50 (1857) is preserved in this clause].

223.—Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served

Service of summons or warrant.

*Legal
Proceedings.*

or executed by the constable or special constable whom it is directed.

[The effect of section 101 of the Act of 1835 is preserved in this clause. See under section 158, page 139 *ante*.

*Procedure in
penal actions
against
corporate
officers.*

224.—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.

[The plaintiff's declaration need not state that he is a burgess. *Simpson v. Ready* (12 M. & W., 736).

See *Mayor and Corporation of Harwich v. Gant* (5 E. & B., 182). Where penalty has been recovered as to corporate title to moiety].

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

[The effect of section 53 of the Act of 1835 is preserved in this clause].

*Quo warranto
and mandamus.*

225.—(1.) An application for an information in the nature of a quo warranto against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election.

[A vast number of cases have been reported with respect to the disturbance in office by nature of a *quo warranto*. Six years was for a long time the limit, but the obvious inconvenience of interfering with the holder of an office after he had been in the enjoyment of it for a long period was so frequently made manifest that the limit was reduced to twelve months by 7 Will. 4 and 1 Vict. c. 78. The court may in its discretion refuse an application, even if made within twelve months, if they think there has been undue delay. *Reg. v. Hodson* (4 Q. B. 648, n.)].

(2.) In the case of such an application, or of an application *Legal Proceedings.* for a mandamus to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or mandamus absolute.

[L. C. J. Abbott lays down the general rule:—"In the case of individual members of the corporation, it is wholly within the discretion of the court to say whether such an information should be granted or refused." *Rex v. Trevenen* (2 B. & A., 479).]

Where individuals apply it is discretionary with court to grant or refuse rule. *Reg. v. Ward* (L. R., 8 Q. B., 210). Lord Mansfield has expressed the principle guiding "No precise rule can be laid down in these cases; but all the circumstances of the case taken together must govern the discretion of the court." *Rex v. Stacey* (1 T. R., 13)].

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance.

[The effect of section 23 of 7 Will. 4 and 1 Vict. c. 78 (1837), and sections 1 and 5 of 6 & 7 Vict. c. 89 (1843), is preserved in this clause].

226.—(1.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof. Provisions for protection of persons acting under Act.

[The words "or in respect of any alleged neglect or default in the execution of this Act" are an addition to the provisions of former statute, with the view of extending protection to such cases].

*Legal
Proceedings.*

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

[The effect of section 133 of the Act of 1835 is preserved in this clause.

The word "person" includes incorporated company. *Boyd v. Croydon Railway Company* (4 Burg. n. c. 669). See also *Cortis v. Kent Waterworks Company* (7 B. & C., 314).

"Commencement" dates from information or proceedings before magistrates. *Rex v. Stokes* (2 M. & Sel., 72.)

The chief constable of a borough having by the direction of borough magistrates, laid an information against a person for conspiracy, an action for malicious prosecution was brought by such person against him, and a verdict recovered for £200. *Held*, that it was not competent to town council to order payment of the chief constable's costs out of borough fund or rate under 5 & 6 Will. 4. c. 76, s. 82. *Quere* whether such inability would be hereby removed].

Power for
borough
constables to
take bail.

227.—(1.) Where a person charged with a petty misdemeanour is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.

(2.) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice. *Legal Proceedings.*

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.

(5.) If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.

(6.) The clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in quarter sessions.

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.

(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.

[The effect of section 79 of the Act of 1835 is preserved in this clauses.]

PART XIII.

GENERAL.

*Boundaries.**Boundaries.*

Boundaries of
boroughs and
transfer of
parts to
counties.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed.

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county, wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed.

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodging, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any purpose, in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, dépôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes,

as such commissioners then exist ; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

[The effect of sections 7 and 8 of the Act of 1835, sections 1, 2 and 5 of 6 & 7 Will. 4, c. 103 (1836), and section 41 of 7 Will. 4 and 1 Vict. c. 78 (1837), is preserved in this clause].

229.—If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any ; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid ; and the rate aforesaid shall continue to be levied by warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

Adjustment between boroughs and counties on change of boundaries.

[The effect of section 8 of the Act of 1835, and section 1 of 6 & 7 Will 4, c. 103 (1836), is preserved in this clause].

Time.

Time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day ;

Computation of time.

Time.

and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

The effect of 3 & 4 Will. 4, c. 31, section 30 of the Act of 1835, section 25 of 7 Will. 4 and 1 Vict. c. 78 (1837), section 25 of 35 & 36 Vict. c. 60 (1872), and section 11 of 38 & 39 Vict. c. 40 (1875), is preserved in this clause].

*Distance.**Distance.*

Measurement
of distances.

231.—The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

[The effect of section 1 of 32 & 33 Vict. c. 55 (1869), and section 76 of 6 & 7 Vict. c. 18 (1843), is incorporated in this clause].

*Notices.**Notices.*

Notices on
town hall.

232.—Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

[Church and chapel doors where there is no town hall, would meet the requirements of this section].

Inspection
and Copies.

Inspection and Copies.

Inspection of
documents.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom.

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money. *Inspection and Copies.*

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5.) The Freeman's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

[See hereon 12 Geo. 3, c. 21, s. 2, and 32 Geo. 3, c. 58, s. 4].

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

[See hereon, *Rex v. Arnold* (4 A. & E., 657)].

(7.) If a person having the custody of any document in this section mentioned,—

(a.) Obstructs any person authorized to inspect the same in making such inspection thereof as in this section mentioned; or

(b.) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

[The effect of sections 5, 15, 69, and 93 of the Act of 1835, and section 22 of 7 Will. 4 and 1 Vict. c. 78 (1837), is preserved in this clause].

Fees.

Fees.

234.—The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorized to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

Tables of fees to be posted.

(a.) The room where the business of the town clerk's office is transacted;

Fees.

- (b.) The room, if any, where the justices of the borough sit for transacting their business;
- (c.) The room, if any, where the court of quarter sessions of the borough is held; and
- (d.) The room, if any, where the borough civil court is held.

[The effect of section 125 of the Act of 1835 is preserved in this clause].

*Seals and
Signatures.*

Seals and Signatures.

Forgery.

235.—If any person forges the seal or signature affixed or subscribed to a bye-law made under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

[The effect of section 4 of 36 & 37 Vict. c. 33 (1873) is preserved in this clause].

*Applications
to Treasury.*

Applications to Treasury.

Notice of
application
to a d
correspondence
with Treasury.

236.—(1.) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act, notice of the intention to make the application shall be fixed on the town hall one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection.

(2.) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

[The effect of section 94 of the Act of 1835, and sections 8 and 9 of 23 & 24 Vict. c. 16 (1860), is preserved in this clause].

Deputy.

Deputy.

Acts of deputy
not to be
invalidated
by defect in
appointment.

237.—No defect in the appointment of a deputy under this Act shall invalidate his acts.

Overseers.

Overseers.

Notices to
and acting of
overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them.

(2.) Any notice by the Municipal Corporations Acts required *Overseers.* to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

[The effect of section 14 of 16 & 17 Vict. c. 79 (1853) is preserved in this clause].

Declarations and Oaths.

Declarations and Oaths.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act. *Power to administer oaths, &c.*

[The oaths should be taken in open court, where not taken before the council].

(2.) Nothing in this Act in any case shall require or authorize the taking or making of any oath or declaration that would not have been required or authorized under the Promissory Oaths Act, 1868,* or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

[The effect of section 104 of the Act of 1835, and section 3 of 6 & 7 Will. 4, c. 105 (1836), is preserved in this clause].

Forms.

Forms.

240.—The forms in the Eighth Schedule† or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law. *Forms in schedule.*

Misnomer or Inaccurate Description.

Misnomer or Inaccurate Description.

241.—No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood. *Misnomer or inaccurate description not to hinder.*

[The effect of section 142 of the Act of 1835 is preserved in this clause. The case of *Mather v. Brown* (L. R., 1 C. P. D., 596), (*ante* pages 65 and 73) is hereby provided for].

* The 31 & 32 Vict. c. 72.

† See these forms at page 201 *et seq.*

Substitution in former Acts.

Provision for references in unrepealed enactments to 5 & 6 Will 4, c. 73, &c.

Substitution in former Acts.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connexion therewith, such provision of this Act as is also mentioned in connexion therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

Short titles of Acts partly repealed.

243.—Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Returning Officers at Parliamentary Elections.

Mayor of certain boroughs to be returning officer in parliamentary elections.

Returning Officers at Parliamentary Elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

[The sheriff is the returning officer in cities and towns which are counties of themselves with the above exception].

(2.) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer.

[The effect of section 57 of the Act of 1835 is preserved in this clause].

*Disfranchised Parliamentary Boroughs.**Disfranchised
Parliamentary
Boroughs.*

245.—Where a borough has, in pursuance of the Representation of the People Act, 1867,* or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote.

Electors in
disfranchised
boroughs.

[The effect of 31 & 32 Vict. c. 41 is preserved in this clause].

*Licensing.**Licensing.*

246.—In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, “to regulate the granting of licences to keepers of inns, alehouses, and victualling houses in England,” the expressions “town corporate,” “county or place,” and “division or place,” include every borough having a separate commission of the peace, and the expression “high constable” includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

Explanation of
terms “town
corporate,” &c.
in Licensing
Act.

[The effect of section 4 of 24 & 25 Vict. c. 75 (1861) is preserved in this clause].

*Freedom of Trading.**Freedom of
Trading.*

247.—Notwithstanding any custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

Right of free
trading in
boroughs.

[The effect of section 14 of the Act of 1835 is preserved in this clause].

*Cinque Ports.**Cinque Ports.*

248.—(1.) The boroughs of Hastings, Sandwich, Dover,

Special
provisions as
to certain of the
Cinque Ports.

* The 30 & 31 Vict. c. 102.

Cinque Ports.

Hythe, being four of the Cinque Ports* and the borough of Rye, are in this section referred to as the five boroughs.

(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3.) The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licences or authorities to persons to keep inns, alehouses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace.

(5.) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a

* The following list of the Cinque Ports, &c. (omitting New Romney (Cinque Port) and Winchilsea ancient town, &c.), with their corporate and non-corporate members, is given in the order in which they appear in the Charter of Charles II. This list will explain the 2nd, 3rd, 4th, 5th and 6th subsections following, and indicate the outlying districts. The abbreviation "qr. sess." means that the borough has a separate court of quarter sessions, and "com. P." means that the borough has a separate commission of the peace. The asterisk (*) signifies those boroughs which are under this Act, the others being governed under their special charters or the charters of the Cinque Ports. The Cinque Port of New Romney and the ancient town and liberty of Winchilsea (Rye being also an ancient town and liberty) are not included in the section, doubtless owing to neither of them coming within the provisions of this Act:—

* DOVER (Cinque Port—qr. sess.).

* Folkestone (corporate member—qr. sess.).

* Faversham (corporate member—qr. sess.).

* Margate (corporate member—qr. sess.).

St. John (parish).

Birchington (parish).

Woodchurch (parish).

St. Peter's (parish).

Kingsdown (hamlet).

Ringwood (parish).

* SANDWICH (Cinque Port—qr. sess.).

Fordwich (corporate member—com. P.).

* Deal (corporate member—qr. sess.).

Walmer (parish).

Ramsgate (parish).

Sarre (village).

Brightlingsea (parish).

* HASTINGS (Cinque Port—qr. sess.).

Pevensey (corporate member—qr. sess.).

Seaford (corporate member—qr. sess.).

Petit Hiam (liberty of Hastings).

Beaksbourne (parish).

Grange (hamlet).

Liberty of Slaice (in Bexhill).

* HYTHE (Cinque Port—qr. sess.).

* RYE (ancient town and liberty—qr. sess.).

* Tenterden (corporate member—qr. sess.).

separate court of quarter sessions shall be charged by the *Cinque Ports*. respective courts of quarter sessions of the five boroughs, with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs.

(7.) Nothing in this section shall affect the Cinque Ports Act, 1869,* or the Acts therein recited.

[The effect of sections 134 and 135 of the Act of 1835, and sections 10 and 11 of 6 & 7 Will. 4, c. 105 (1836), is preserved in this clause].

Cambridge.

Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough.

Vice-Chancellor
of Cambridge.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

[The effect of section 12 of 6 & 7 Will. 4 c. 105 (1836) is preserved in this clause].

Savings.

Savings.

250.—(1) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers,

Saving for
existing
corporations.

* The 32 & 33 Vict. c. 53.

Savings.

privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice, nevertheless, to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act.

(2.) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorized by law to so collect, and are so collecting, the same.

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835,* to have a separate commission of the peace.

[The whole of these subsections constitute a general saving for existing corporations].

Saving for
local Acts

251.—Nothing in this Act shall alter the effect of any local Act of Parliament.

[The effect of section 4 of 6 & 7 Will. 4, c. 103 (1836) is preserved in this clause].

* See Appendix, page 227, for list of boroughs named in Schedules of the Act of 1835.

252.—Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865,* or the Prison Act, 1877,† and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, “to amend the laws concerning prisons,” or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850.‡ or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

Savings.

Saving for Prison Acts.

253.—Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval or marine officer in Her Majesty’s service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty’s dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

Saving for military and naval officers, &c.

[The effect of section 51 of the Act of 1835 is preserved in this clause. A commissioned officer of the army or marines is incapable of serving any corporate office whilst on full pay. See also 42 & 43 Vict. c. 33, s. 140].

254.—Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government of any of Her Majesty’s dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving for dockyards, barracks, &c.

[The effect of section 89 of the Act of 1835 is preserved in this clause].

255.—Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

Saving as to Admiralty.

[The effect of sections 64 and 89 of the Act of 1835, and 2 & 3 Will. 4, c. 40 (1832), is preserved in this clause. See also 7 & 8 Vict. c. 92, s. 25].

256.—Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports.

Saving for Lord Warden.

[The effect of section 108 of the Act of 1835 is preserved in this clause].

257.—Nothing in this Act shall—

(1.) Affect the rights, privileges, duties, or liabilities of the

Saving for universities.

* 23 & 29 Vict. c. 126. † 40 & 41 Vict. c. 21. ‡ 13 & 14 Vict. c. 91.

Savings.

- chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or
- (2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively; or
 - (3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities; or
 - (4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or
 - (5.) Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or
 - (6.) Authorize the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or

[Many attempts have been made by the municipal authority of Cambridge to have the powers of the Urban Sanitary Authority of the district vested in it, but these attempts have always been successfully opposed by the University authorities who are largely represented at the Board of Improvement Commissioners for the town].

- (7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

[The effect of sections 137 and 138 of the Act of 1835, section 2 of 2 & 3 Vict. c. 28 (1839), section 2 of 20 & 21 Vict. c. 50 (1857), and section 2 of 24 & 25 Vict. c. 75 (1861), is preserved in this clause].

Saving for
jurisdiction
over cathedral
precincts.

258.—Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

[The effect of section 138 of the Act of 1835 is preserved in this clause].

259.—Nothing in this Act shall prejudicially affect her *Savings* Majesty's royal prerogative; and the enabling provisions of *Saving for royal prerogative.* this Act shall be deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative.

[The effect of section 10 of 40 & 41 Vict. c. 69 (1877) is preserved in this clause].

260.—(1.) The repeal effected by this Act shall not *Saving as to repealed enactments.* affect—

- (a.) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or
- (b.) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or
- (c.) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or
- (d.) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or
- (e.) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or
- (f.) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or
- (g.) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.

(2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, bye-law, jurisdiction,

Savings.

office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.

(3.) All elections, declarations, appointments, bye-laws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

SCHEDULES.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

PART I.—*Enactments repealed generally.*

[See Section 5 and pages 21 to 23.]

PART II.—*Enactments repealed only as to Boroughs within this Act.*

[See Section 5 and pages 23 and 24.]

THE SECOND SCHEDULE.

MEETINGS AND PROCEEDINGS OF COUNCIL.

[See Section 22 and pages 37 and 38.]

THE THIRD SCHEDULE.

ELECTIONS.

PART I.—*Preparation and Revision of Parish Burgess Lists in Boroughs not Parliamentary.*

[See Section 44 and pages 57-8.]

PART II.—*Rules as to Nomination in Elections of Councillors.*

[See Section 55 and pages 64 to 67.]

PART III.—*Modifications of the Ballot Act in its Application to Municipal Elections.*

[See Section 58 and page 70.]

PART IV.—*Enactments which are to revive on the Expiration of the Ballot Act.*

[See Section 76 and pages 79–80]

THE FOURTH SCHEDULE.

FEES AND REMUNERATION.

The following fees and remuneration shall be payable :—

1. *Commissioner for Division into Wards or Alteration of Wards.*

Five guineas for every day he is employed, over and above his travelling and other expenses.

2. *Assistant Recorder and Officers of Second Court of Quarter Sessions.*

For every day not exceeding two, or, by resolution of the council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder Ten guineas.

To an assistant clerk of the peace Two guineas.

To an additional crier Half a guinea.

The remuneration is payable on a certificate from the recorder showing the amount due

3. *Coroner.*

To the borough coroner (subject to the provisions of any other Act relating to coroners)—

For every inquisition which he duly takes in the borough Twenty shillings.

and

For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition Ninepence.

4. *Special Constables.*

To a special constable, for every day during which he is called out to act as such. } Three shillings and sixpence.

[See also Sections 30, 168, 171, and 196, and pages 45, 148, 150, and 162].

THE FIFTH SCHEDULE.

PAYMENTS OUT OF THE BOROUGH FUND.

PART I.—*Payments which may be made without Order.*

[See Section 140 and page 125].

PART II.—*Payments which may not be made without Order.*

[See Section 140 and page 126].

THE SIXTH SCHEDULE.

COUNTIES TO WHICH CERTAIN BOROUGHs ARE TO BE CONSIDERED
ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

[See Section 188 at page 158].

THE SEVENTH SCHEDULE.

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.

[See Section 214 at page 175.]

THE EIGHTH SCHEDULE.

FORMS.

PART I.—*Declarations on accepting Office.*

FORM A.

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, *A.B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of _____, hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say, And I hereby declare that I am seised or possessed of real or personal estate, or both [as the case may be], to the value or amount of one thousand pounds, or five hundred pounds [as the case may require], over and above what will satisfy my just debts.*]

[See Section 34 at page 48].

FORM B.

DECLARATION BY RECORDER OR BOROUGH JUSTICE.

I, *A.B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of _____ according to the best of my judgment and ability.

[See Section 163 at page 143].

PART II.—*Forms relating to Elections.*

FORM C.

THE LIST OF BURGESSES of the Borough of _____ in the Parish
[*or* Township] of _____.

Surname and other Names of each Person in full.	Nature of Property for which he is now rated.	Name and Situation of Property for which he is now rated.
Ashton, John . . .	Shop . . .	No. 23, Church Street.
Bates, Thomas . . .	House . . .	Brook's Farm.

(Signed) *A.B.* } Overseers.
C.D. }

FORM D.

NOTICE OF CLAIM.

To the Town Clerk of the Borough of .

I HEREBY give you notice, that I claim to have my name inserted in the parish burgess lists of the borough of . that I occupy [*here describe the house, warehouse, counting-house, shop, or other building then occupied by the claimant*] in the borough, and that I have been rated in the parish of [*here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification*].

Dated the

day of

in the year

(Signed) John Allen of [*place of abode*].

FORM E

NOTICE OF OBJECTION.

To the Town Clerk of the Borough of . [*or to the person objected to as the case may be*].

I HEREBY give you notice, that I object to the name of Thomas Bates of Brook's Farm, in the parish of . [*describe the person objected to as described in the parish burgess list*] being retained on the parish burgess lists of the borough of .

Dated the

day of

in the year

(Signed) John Ashton of [*here state the place of abode and the property for which he is said to be rated in the parish burgess lists*].

FORM F.

LIST OF CLAIMANTS.

The following Persons claim to have their Names inserted in the Parish Burgess Lists of the Borough of

Surname and other Names of each Claimant.	Nature of Property for which he is now rated.	Situation of Property for which he is now rated.	Parish [<i>or Parishes</i>] in which he has been rated, as stated in the Claim.
Allen, John .	House .	No. 17, High Street.	Rated in the last year in Saint Mary's parish in the borough, and in the two preceding years in Saint James's parish in the borough.

(Signed) A.B., Town Clerk.

FORM G.

LIST OF PERSONS OBJECTED TO.

The following Persons have been objected to as not being entitled to have their Names retained in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Person objected to.	Nature of Property for which he is now rated.	Situation of Property for which he is said to be now rated in the Overseers' List.	Parish in which is the Property for which he is now said to be rated in the Overseers' List.
Bates, Thomas .	House .	Brook's Farm .	Saint James's.

(Signed) A.B., Town Clerk.

FORM H.

NOTICE.

Borough of . Election of [Councillors, or elective Auditors, or revising Assessors, as the case may be] for the [Ward or several Wards of the] Borough.

Take Notice,

1. That an election of [here insert the number of councillors, auditors, or assessors, as the case may be] for the [Ward or several wards of the] said borough will be held on the day of

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his abode and description, and may be in the following form, or to the like effect:

(Set out Form I.)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [or ward], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of day the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of

18 .

A.B., Town Clerk.

FORM I.

NOMINATION PAPER.

Borough of . . . Election of Councillors [elective Auditors, or
revising Assessors] for . . . Ward in the said Borough [or the
said Borough] to be held on the . . . day of . . . 18 . . .

We, the undersigned, being respectively burgesses, hereby nominate the
following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A.B. C.D.	

We, the undersigned, being respectively burgesses, hereby assent to the
nomination of the above-named person as a candidate at the said election.

Dated this . . . day of . . . 18 . . .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

FORM K.

BALLOT PAPER.

FORM of Front of Ballot Paper.

For Elective Auditors.

Counterfoil.

No.

Note.—The
counterfoil is
to have a num-
ber to corre-
spond with
that on the
back of the
ballot paper.

1	CADE. (John Cade, of 22, Wellclose Place, Accountant.)	
2	JOHNSON. (Charles Johnson, of 7, Albion Street, Gentleman.)	
3	THOMPSON. (William Thompson, of 14, Queen Street, Silversmith.)	

For Revising Assessor.

1	BACON. (Charles Bacon, of 29, New Street, Solicitor.)	
2	BYRON. (James Byron, of 45, George Street, Commission Agent.)	
3	WILSON. (George Wilson, of 22, Hanover Square, Gentleman.)	

FORM of Back of Ballot Paper.

No. . Election of elective auditors [or revising assessors] for the
borough of . to be held on the . day of . 18 .

The number on the back of the ballot paper is to correspond with that on the counterfoil.

PART III.—Forms relating to Working Men's Dwellings.

FORM L.

FORM OF GRANT BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of .

Grant No. .

The mayor, aldermen, and burgesses of the borough of . by
virtue and in pursuance of the above-mentioned Act, and in consideration of
paid to them by *A.B.* of . hereby grant to
the said *A.B.* (herein referred to as the grantee), and his heirs, the site
following (that is to say) [*insert description*] with the appurtenances, subject to
the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's
dwelling (and no more) according to the plan and specification deposited in the
office of the town clerk, numbered ., and under the superintendence and to
the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the
building, and shall not sell or alienate the site or building in divisions or
separate parts, and, in case of the taking down or destruction of the building
shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character
of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and
perform any stipulation of this grant, the corporation may, if they think fit,
declare that the site is re-vested in the corporation; and thereupon the same,
with the dwelling and other buildings thereon, shall become and be vested in
the corporation, as if this grant had not been made.

In witness whereof, &c., this

day of . 187 .

(Corporate Seal.)

FORM M.

FORM OF TRANSFER OF GRANT.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of Transfer No. (Grant No.).
A.B. of, by virtue and in pursuance of the above-mentioned
 Act, and in consideration of paid to him by *C.D.*
 of, hereby grants and transfers to the said *C.D.* and his heirs
 of the site comprised in the within-written* grant [or the grant No. under
 the said Act, dated the day of 187 †] with
 the appurtenances and with the dwelling and other buildings thereon, subject
 to the conditions on which that site is held immediately before the execution
 of this transfer.

In witness whereof, &c., this day of 18
 *A.B.* (L.S.)

* In case of transfer by indorsement.

† In case of transfer by separate deed.

FORM N.

FORM OF LEASE BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of Lease No.

The mayor, aldermen, and burgesses of the borough of
 by virtue and in pursuance of the above-mentioned Act, and in consideration
 of the sum of paid to them by *A.B.* of and
 of the rent and stipulations in this lease reserved and contained, and
 to be by him, his executors, administrators, or assigns, paid and performed
 hereby lease to the said *A.B.* (herein referred to as the lessee), his
 executors and administrators, the site following (that is to say) [*insert*
description] with the appurtenances, for the term of [*nine hundred and*
ninety-nine] years from the day of, at the
 yearly rent (clear of all deductions) of, payable by two
 equal half-yearly payments on the day of and
 the day of in every year, the first thereof to
 be made on the day of, and the last thereof
 to be made in advance on the day of next before
 the end of the term, and so that on the term being determined by re-entry a
 proportionate part of the rent for the fraction of the current half year up to
 re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors,
 administrators, or assigns, will during the term pay the rent on the days and
 in manner aforesaid, and will pay all taxes, rates, and outgoings for the time
 being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say) :

1. The lessee shall build on the site one working-man's or working-men's
 dwelling (and no more) according to the plan and specification deposited in
 the office of the town clerk, and numbered, under the superintendence
 and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during
 the term maintain and repair the building, and shall not sell or alienate the
 site or building in divisions or separate parts and, in case of the taking down
 or destruction of the building, shall not rebuild it, except in manner approved
 by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

[illegible]

FORM O.

FORM OF ASSIGNMENT OF LEASE.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of Transfer No. (Lease No.)
A.B. of (herein referred to as the assignor) by virtue and in
pursuance of the above-mentioned Act, and in consideration of
paid to him by *C.D.* of, hereby assigns to the said *C.D.*
(herein referred to as the assignee,) his executors and administrators, the site
comprised in the within-written lease* [or the lease No. under the said
Act, dated the day of 187 †], with the
appurtenances, and with the dwelling and other buildings thereon, for the
residue of the term of years, at the rent and subject to
the stipulations and conditions at and subject to which that site is held
immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this day of 187 .

A.B. (L.S.)
C.D. (L.S.)

* In case of assignment by indorsement.

† In case of assignment by separate deed.

PART IV.—Forms relating to Borough Bridges.

Form P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of Mortgage No.

We, the mayor, aldermen, and burgesses of the borough of
by virtue and in pursuance of the above-mentioned Act, and in consideration
of the sum of paid to them by A.B., of for the

purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said *A.B.*, his executors, administrators, and assigns, from the day of the date hereof, until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of at [*place of payment*].

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

FORM Q.

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Transfer No. . (Mortgage No. .)

I *A.B.* of in consideration of the sum of paid to me by *C.D.* of , do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-mentioned Act, for securing the sum of and interest thereon at per centum per annum [*or, if the transfer is by indorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security*], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this day of 187 .

A.B. (*L.S.*)

THE NINTH SCHEDULE.

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.

General References.

2 & 3 Vict. c. 93.—An Act for the establishment of county and district constables by the authority of justices of the peace (section 24).

5 & 6 Vict. c. 109.—An Act for the appointment of parish constables (section 21).

9 & 10 Vict. c. 74.—An Act to encourage the establishment of public baths and wash-houses (section 1).

10 & 11 Vict. c. 62.—An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy (section 13).

12 & 13 Vict. c. 35.—An Act for requiring annual returns of the expenditure

on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament (section 2.)

12 & 13 Vict. c. 82.—An Act to relieve boroughs, in certain cases, from contribution to certain descriptions of county expenditure.

13 & 14 Vict. c. 20.—An Act to amend an Act of the fifth and sixth years of Her present Majesty for the appointment and payment of parish constables (section 7).

13 & 14 Vict. c. 105.—An Act for facilitating the union of liberties with the counties in which they are situate (section 10).

14 & 15 Vict. c. 28.—An Act for the well-ordering of common lodging-houses (section 2).

14 & 15 Vict. c. 34.—An Act to encourage the establishment of lodging-houses for the labouring classes (section 2).

16 & 17 Vict. c. 73.—An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy, in case of need, of seafaring men employed in other public services (section 24).

16 & 17 Vict. c. 97.—The Lunatic Asylums Act, 1853 (section 9).

17 & 18 Vict. c. 71.—An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts.

17 & 18 Vict. c. 87.—An Act to make further provision for the burial of the dead in England beyond the limits of the metropolis (section 3).

17 & 18 Vict. c. 105.—The Militia Law Amendment Act, 1854 (section 11).

18 & 19 Vict. c. 57.—An Act further to amend the laws relating to the militia in England (section 7).

18 & 19 Vict. c. 121.—The Nuisances Removal Act for England, 1855.

19 & 20 Vict. c. 69.—An Act to render more effectual the police in counties and boroughs in England and Wales.

20 & 21 Vict. c. 81.—An Act to amend the Burial Acts.

22 & 23 Vict. c. 40.—An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same (section 25).

23 & 24 Vict. c. 68.—An Act for the better management and control of the highways in South Wales.

25 & 26 Vict. c. 61.—An Act for the better management of highways in England.

26 & 27 Vict. c. 13.—An Act for the protection of certain garden or ornamental grounds in cities and boroughs.

26 & 27 Vict. c. 97.—The Stipendiary Magistrates Act, 1863 (section 2).

28 & 29 Vict. c. 126.—The Prison Act, 1865 (section 4).

30 & 31 Vict. c. 102.—The Representation of the People Act, 1867.

31 & 32 Vict. c. 22.—The Petty Sessions and Lock-up House Act, 1868 (section 3).

31 & 32 Vict. c. 46.—The Boundary Act, 1868 (First Schedule).

31 & 32 Vict. c. 58.—The Parliamentary Electors Registration Act, 1868.

31 & 32 Vict. c. 125.—The Parliamentary Elections Act, 1868 (sections 43 and 45).

31 & 32 Vict. c. 130.—The Artizans and Labourers Dwellings Act, 1868 (section 3).

33 & 34 Vict. c. 75.—The Elementary Education Act, 1870 (section 3).

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A.).

34 & 35 Vict. c. 56.—The Dogs Act, 1871 (Schedule).

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2).

35 & 36 Vict. c. 38.—The Infant Life Protection Act, 1872 (First Schedule).

35 & 36 Vict. c. 91.—An Act to authorize the application of funds of municipal corporations and other governing bodies in certain cases.

38 & 39 Vict. c. 17.—The Explosives Act, 1875 (section 108).

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4).

38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 34).

39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37).

40 & 41 Vict. c. 21.—The Prison Act, 1877 (section 59).

41 & 42 Vict. c. 49.—The Weights and Measures Act, 1878 (Fourth Schedule).

41 & 42 Vict. c. 74.—The Contagious Diseases (Animals) Act, 1878 (sections 7 and 66).

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act 1878 (section 38).

PART II.

Particular References.

14 & 15 Vict. c. 55.—An Act to amend the law relating to the expenses of prosecutions and to make further provisions for the apprehension and trial of offenders in certain cases:

In section 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870:

In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

APPENDIX.

GENERAL RULES UNDER THE PROVISIONS OF SECTION 100 (SEE PAGE 98).

General Rules of the Judges under the Corrupt Practices (Municipal Elections) Act, 1872.

Rule

1. Petition, mode of presenting, receipt of same, copy of petition.
2. Petition, contents and form of.
3. Petitions to be divided into paragraphs, numbered, &c.
4. Petition, conclusion of.
5. Petition, form of.
6. Petition, evidence need not be stated, court may order particulars.
7. When office claimed because of a majority of votes, a list of votes objected to and heads of objection to each to be delivered.
8. When respondent intends to disqualify person claiming the seat, a list of votes objected to and heads of objection to be delivered.
9. With petition, petitioners to leave with master the name of some attorney entitled to practise in the High Court of Justice as agent.
10. A person elected may leave notice with a Master appointing an attorney to act as his agent should there be a petition, or stating that he intends to act for himself, &c.
11. The master to keep a book to enter addresses of agent.
12. The master to send a copy of petition to town clerk, with name of petitioner's agent, &c., town clerk to publish from particulars cost of publication.
13. Time of giving notice of presentation of petition.
14. Service of petition where respondent has named an agent, service of petition where no agent named, when personal.
15. Evasion of service of petition, provision in case of.
16. As to deposit of money by way of security of costs and charges.
17. Receipt of certificate of, to be filed by the master, account to be kept in a book open to inspection.
18. The recognisance as security, how to be acknowledged, one or more recognisances may be taken.
19. What the recognisance is to contain, form of.
20. The recognisance to be left at the master's office.
21. Time of giving notice of objection to recognisance.
22. Of objections to the recognisance.
23. Objections to be heard by the master, subject to appeal.
24. The hearing and decision either upon affidavit or examination of witnesses.
25. If security be declared sufficient, its sufficiency to be deemed to be established within the meaning of the 13th section.
26. If objection to the security be allowed, the master or judge to state what amount he deems requisite to make the security sufficient, &c.
27. How costs to be paid.
28. As to costs of hearing and deciding an objection to recognisance, affidavit of sufficiency.
29. The effect on an order of the master for payment of costs.
30. The master to make out a "municipal election list," its contents open to inspection.

31. Trial of petition—Time of to be fixed by the judges on the rota, the master to give notice to the parties, and public notice.
32. The master to stick up notice of trial in his office.
33. Notice of trial, form of.
34. A judge may postpone commencement of the trial.
35. Trial to stand adjourned to next day in the event of the barrister not having arrived.
36. Adjournment—No formal adjournment necessary.
37. Special case—Application to state.
38. Title of the court and of proceedings.
39. An officer of the court, similar to the clerk of assize or arraigns, to be appointed, to be called the registrar of the court.
40. Costs of witnesses to be ascertained by registrar, certificate, allowing them to be given unless the court should otherwise order.
41. Witness—Order of court to compel attendance of.
42. Contempt—Warrant of commitment for.
43. To whom to be directed—Authority of.
44. Interlocutory matters to be disposed of by a judge.
45. Withdrawing petition—Notice of application for leave to withdraw petition—Form of notice.
46. Notice to be left at master's office.
47. Copy of notice of intention to apply to withdraw petition to be given to respondent and town clerk—Form of notice.
48. Any person who may have been a petitioner may apply to be substituted.
49. Time and place for hearing application to be fixed by a judge—Notice to be given.
50. Notice of abatement of petition.
51. Proceedings where petitioner dies.
52. Manner and time of respondent's giving notice that he does not intend to oppose petition.
53. Upon such notice being given, master to send copy to petitioner and to town clerk.
54. Time for applying to be admitted as a respondent.
55. Taxation and recovery of costs.
56. Agent for the parties to leave notice of appointment with master.
57. No proceedings defeated by any formal objection.
58. As to publication of rules.

Additional General Rules (10th December, 1872).

1. As to claims to money deposited in the Bank of England pursuant to rule 16.
2. As to return or disposition of money so deposited.
3. Rule or order as to same after notice and proof that all just claims have been satisfied.
4. Rule or order may direct payment either to party in whose name it is made or to any other person entitled to receive same.
5. Upon such rule or order being made the amount may be drawn.
6. The draft of the judge to be a sufficient warrant for payment.
7. The barrister may appoint a person to act as crier and officer of court.
8. Shorthand writer to be the shorthand writer to the House of Commons.

Additional General Rules (27th January, 1875).

1. A copy of every order and of every particular delivery to be filed with master, and be produced at the trial by registrar.
2. Petitioner or his agent immediately after notice of the presentation of petition and nature of proposed security to file an affidavit of service thereof.
3. The days mentioned in rules 7 and 8 and in any rule of court or judge's order or any act to be done so many days before the day appointed for trial, to be reckoned exclusively of the day of delivery or doing the act, and exclusive of Sunday, Christmas Day, Good Friday, and any day of public fast or thanksgiving.
4. Provision where the last day falls on a holiday.
5. Rule 40 revoked, and provision in lieu thereof.

MICHAELMAS TERM, 1872.

RULES REFERRED TO IN SECTION 100, SUBSECTION 6,

(SEE PAGE 98).

GENERAL RULES

For the effectual execution of "The Corrupt Practices (Municipal Elections) Act," 1872, made by

Sir COLIN BLACKBURN, Knight, one of the Justices of the Queen's Bench ;
Sir HENRY SINGER KEATING, Knight, one of the Justices of the Common Pleas ;
and

Sir ANTHONY CLEASBY, Knight, one of the Barons of the Exchequer ;

The Judges for the time being on the rota for the trial of election petitions in England, pursuant to the Parliamentary Elections Act, 1868.

1. The presentation of a Municipal Election Petition shall be made by leaving at the office of the Master for the time being nominated by the Chief Justice of the Common Pleas, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt which may be in the following form :

Received on the day of at the Master's office,
a petition touching the election of *A.B.*, alderman, councillor, [*&c. as the case may be*] for the borough of purporting to be signed
by [*insert the names of petitioners*].

C.D., Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 13, subsection (1), of the Municipal Elections Act.

2. A municipal election petition shall contain the following statements :

(1.) It shall state the right of the petitioner or petitioners to petition within section 13, subsection (1), of the Act :

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court of Common Pleas or a judge at chambers.

4. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient :

In the Common Pleas.

"The Municipal Elections Act, 1872."

Election for [*state the place and office for which election held*] holden on the day of A.D.

The petition of *A.* of [*or of A. of* , and *B.* of , as the case may be] whose names are subscribed.

1. Your petitioner *A.* is a person who voted [*or had a right to vote, as the case may be*], at the above election [*or was a candidate at the above election*]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

2. And your petitioners state that the election was holden on the day of A.D. , when *A.B.*, *C.D.*, and *E.F.*, were candidates, and that *A.B.* and *C.D.* have been in the usual manner declared to be duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A.B.* was not duly elected, and that the election was void [*or that the said E.F. was duly elected and ought to have been returned, or as the case may be*].

(Signed)

A.

B.

6. Evidence need not be stated in the petition but the Court of Common Pleas or a judge at chambers may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered.

7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court of Common Pleas or a judge at chambers upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 15th section of the Act, subsection 9, such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such lists to all persons concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court of Common Pleas or a judge at chambers, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

9. With the petition petitioners shall leave at the office of the Master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney in the Court of Common Pleas, whom they authorize to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings, may be given by sticking up the same at the Master's office.

10. Any person elected to any municipal office may at any time after he is elected send or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as an attorney in the Court of Common Pleas, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

11. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The Master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 13 of the Act, subsection (1), and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge at chambers on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

15. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Corrupt Practices Municipal Elections Act, 1872, Security Fund," which shall be vested in and drawn upon from time to time by the Chief Justice of the Common Pleas for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

17. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. The recognisance as security for costs may be acknowledged before a judge at chambers or the Master in town, or a justice of the peace in the country.

There may be one recognisance acknowledged by all the sureties, or separate recognisances by one or more, as may be convenient.

19. The recognisance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the day of , in the year of our Lord 18 , before me [name and description] came *A.B.*, of [name and description as above described] and acknowledged himself [or severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [or the following sums], (that is to say) the said *C.D.* the sum of £ , the said *E.F.* the sum of £ , the said *G.H.* the sum of £ , and the said *J.K.* the sum of £ , to be levied on his [or their respective] goods and chattels, land and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognisance is that if [here insert the names of all the petitioners, and if more than one, add, or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [or them] relating to the [here insert the name of the borough] which shall become payable by the petitioner [or petitioners, or any of them,] under the Corrupt Practices Municipal Elections Act, 1872, to any person or persons, then this recognisance to be void, otherwise to stand in full force.

Signed,

[Signature of sureties.]

Taken and acknowledged by the above-named [name of sureties] on the
day of at , before me,

C.D.

A justice of the peace [or as the case may be.]

20. The recognisance or recognisances shall be left at the Master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

21. The time for giving notice of any objection to a recognisance under the 13th section of the Act, subsection (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

22. An objection to the recognisance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognisance has not duly acknowledged the same.

23. Any objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

24. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

25. If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 13th section of the said Act, and the petition shall be at issue.

26. If by order made upon such summons an objection be allowed and the security be declared insufficient, the Master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

27. The cost of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general cost of the petition.

28. The cost of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognisance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the Court of Common Pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognisance, which affidavit may be as follows:—

In the Common Pleas.

Corrupt Practices (Municipal Elections) Act, 1872.

I, *A.B.* of [*as in recognisance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts, of the clear value of £

Sworn, &c.

29. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the Court of Common Pleas, and enforced in like manner as a judge's order.

30. The Master shall make out the municipal election list. In it he shall insert the name of the agents of the petitioners and respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice-board appropriated to proceedings under the said Act, and headed "Municipal Election List."

31. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota, or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

32. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

33. The notice of trial may be in the following form :

Corrupt Practices (Municipal Elections) Act, 1872.

Election petition of

Borough of

Take notice that the above petition [or petitions] will be tried at
on the day of and on such other subsequent days
as may be needful.

Dated the day of

Signed, by order,

A.B.,

The Master appointed under the above Act.

34. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

35. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

36. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

37. The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a judge at chambers, upon hearing the parties.

38. The title of the court held for the trial of a municipal election petition may be as follows :

"Court for the trial of a municipal election petition for the borough of [or
as may be] between petitioner and respondent,"
and it shall be sufficient so to entitle all proceedings in that court.

39. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

40. The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand, unless the court shall otherwise order.

41. The order of the court to compel the attendance of a person as a witness may be in the following form :

Court for the trial of a municipal election petition for [complete the title
of the court] the day of

To *A.B.* [describe the person]. You are hereby required to attend
before the above court at [place] on day of at the hour of
[or forthwith, as the case may be] to be examined as a witness in the matter of
the said petition, and to attend the said court until your examination shall have
been completed.

As witness my hand, *A.B.,*

The barrister to whom the trial of the said petition is
assigned.

42. In the event of its being necessary to commit any person for contempt, the warrant may be as follows :

At a court holden on at for the trial of a municipal election petition for the borough of , before *A.B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Corrupt Practices (Municipal Elections) Act, 1872."

Whereas *C.D.* has this day been guilty, and is by the said court adjudged to be guilty of a contempt thereof. The said court does therefore sentence the said *C.D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C.D.* may be found, shall take the said *C.D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C.D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the

day of

A.B.

A.B.

43. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

44. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Corrupt Practices (Municipal Elections) Act, 1872, as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of then by any judge at chambers.

45. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Corrupt Practices (Municipal Elections) Act, 1872.

Borough of

day of

Petition of [*state petitioners*] presented

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this

day of

(Signed)

46. The notice of application for leave to withdraw shall be left at the Master's office.

47. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall make it public in the borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice :—

Corrupt Practices (Municipal Elections) Act, 1872.

In the Election Petition for

in which

is

petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

48. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

49. The time and place for hearing the application shall be fixed by a judge, and whether before the Court of Common Pleas, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

50. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 17, subsection 5, of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the Court of Common Pleas or a judge at chambers, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the Court of Common Pleas or a judge at chambers may allow.

51. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

52. The manner and time of the respondent's giving notice that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the Master signed by the respondents six days before the day appointed for trial exclusive of the day of leaving such notice.

53. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

54. The time for applying to be admitted as a respondent in either of the events mentioned in the 18th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court of Common Pleas or a judge at chambers may allow.

55. Costs shall be taxed by the Master, or at his request by any Master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of a court ordering them to be paid; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for the like proceedings according to the present practice of the Court of Common Pleas.

56. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

57. No proceedings under the Corrupt Practices (Municipal Elections) Act, 1872, shall be defeated by any formal objection.

58. Any rule made or to be made in pursuance of the Act, if made in term time shall be published by being read by the Master in the Court of Common Pleas, and if made out of term by a copy thereof being put up at Master's office.

Dated the 20th day of November, 1872.

COLIN BLACKBURN,
H. S. KEATING,
A. CLEASBY,

The Judges for the time being on the Rota for the trial of Election Petitions under the provisions of the Parliamentary Elections Act, 1868.

ADDITIONAL GENERAL RULES

FOR the effectual execution of "The Corrupt Practices (Municipal Elections) Act, 1872." made by
The Honble. Sir COLIN BLACKBURN, Knight, one of the Justices of the Queen's Bench.

The Honble. Sir HENRY SINGER KEATING, Knight, one of the Justices of the Common Pleas, and

The Honble. Sir ANTHONY CLEASBY, Knight, one of the Barons of the Exchequer.

The Judges for the time being on the Rota for the trial of Election Petitions in England pursuant to the Parliamentary Elections Act, 1868.

1. All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by the petitioners pursuant to the 16th General Rule, made the 20th day of November, 1872, by the judges for the trial of election petitions in England, shall be disposed of by the Court of Common Pleas or a judge at chambers.

2. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court of Common Pleas or order of a judge at chambers.

3. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court of Common Pleas or judge at chambers may require.

4. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

5. Upon such rule or order being made, the amount may be drawn for by the Chief Justice of the Common Pleas for the time being.

6. The draft of the Chief Justice of the Common Pleas for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

7. The barrister engaged may appoint a proper person to act as crier and officer of the court.

8. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

COLIN BLACKBURN,
H. S. KEATING,
A. CLEASBY,

Judges for the time being on the Rota for the trial of Election Petitions in England, pursuant to the Parliamentary Elections Act, 1868.

Dated the 10th day of December, 1872.

ADDITIONAL GENERAL RULES

MADE BY

THE JUDGES FOR THE TIME BEING FOR THE TRIAL
OF ELECTION PETITIONS IN ENGLAND FOR THE MORE
EFFECTUAL EXECUTION OF "THE CORRUPT PRACTICES
(MUNICIPAL ELECTIONS) ACT, 1872."

1. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the registrar, stamped with the official seal. Such order and particular respectively shall be filed by the party obtaining the same.

2. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

3. The days mentioned in rules 7 and 8, and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

4. When the last day for presenting petitions, or filing lists of votes or objections, under rules 7 and 8, or recognisances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

5. Rule 40 is hereby revoked, and in lieu thereof it is ordered that the amount to be paid to any witness whose expenses shall be allowed by the barrister trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the barrister.

6. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 18th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

7. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the Court of Common Pleas or a judge may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a dies non) after the date of such order.

The Court or Judge may also make such order as to costs as may be just.

Dated the 27th day of January, 1875.

G. PIGOTT,
ROBT. LUSIL,
GEORGE E. HONYMAN,

Judges for the time being on the Rota for the
trial of Election Petitions in England.

TIME TABLE

SHEWING THE DATES (DEFINITE AND APPROXIMATE) UPON WHICH CERTAIN REQUIREMENTS OF THE MUNICIPAL CORPORATIONS ACT, 1882 (AND OTHER ACTS IMPOSING DUTIES UPON BOROUGH OFFICIALS) SHOULD BE OBSERVED AND EFFECTED.

☞ Sunday, Christmas Day, Good Friday, Easter Monday, and Easter Tuesday, or any day appointed for a public fast, humiliation, or thanksgiving, is not to be computed. If a date specified for any particular act or proceeding required to be done falls on either of these days, then the act or proceeding is to be taken on the next day afterwards. If anything is directed to be done within seven days, then those days are not to be reckoned in the computation of time (section 230, subsections 1, 2, and 3), and the same provision applies to the day or date on which any Act is appointed to be done. It must be noted that where specified dates are given in this Table, they are governed by the operation of the section referred to.

	Reference to the Act of 1882 for specification of dates.						
	Sec.	Subsec.	Para.	Sched.	Part.	Para.	Page.
JANUARY.							
1st.—Copy rules, &c., respecting police to be sent to the Secretary of State by Watch Committee	192	..	..	..	..	..	160
Council to appoint trustees for special purposes from their number within the first ten days	135	1	..	..	..	..	122
List of voters in parliamentary boroughs comes into force							
7th.—Registrars of Births and Deaths to transmit to overseers on or before this day, a return of all male persons dying within a parish included in a parliamentary or municipal borough during the period between 15th September, or the date when the last preceding return was made, and the 31st December							
FEBRUARY.							
1st.—Coroners to send to the Secretary of State, on or before this date, a return of inquests held	173	..	..	..	..	..	150
18th.—Town Clerk should give notice of election of auditors and assessors for 1st March not later than this date	54	..	..	..	..	..	64

Reference to the Act of 1882 for specification of dates.						
	Sec.	Subsec.	Para.	Sched.	Part.	Page.
FEBRUARY—continued.						
21st.—Notice of election (in boroughs <i>not</i> parliamentary) of auditors and revising assessors should be given not later than this date, and nominations be sent in to town clerk	{ 62	6	..	..	..	7
Copy of parliamentary register to be sent to the Secretary of State on or before this date (31 & 32 Vict. c. 58, s. 37)	{ 50-9	..	..	Third	II.	62-72 } 65
Mayor to attend at town hall and receive and decide upon nominations to offices of auditor and assessor	62	..	..	Third	II.	74 } 66 }
24th.—Nominations, &c., for auditors and assessors to be published	62	..	..	Third	II.	74 } 67 }
26th.—If poll be demanded for election of auditors and revising assessors, give notice of polling places not later than this date*	62	..	..	Third	IV.	74 } 79 }
Last day for sending name of officer to vote at guardians' elections						
MARCH.						
1st.—Election of auditors (unless some other day appointed) and revising assessors Mayor should appoint his auditor on publication of result of election	62	1	..	..	..	74
25th.—Annual accounts (under Local Taxation Returns Act, 1877) must be made up to this date, and return made one month after completion of audit	25	5	..	..	..	42
Generally—Annual account of receipts, &c., relating to highways, &c., should be sent to Secretary of State (12 & 13 Vict. c. 35, s. 1)	28	2 & 4	..	..	..	42-3
APRIL.						
1st.—Copy rules, &c., respecting police to be sent to the Secretary of State by Watch Committee	192	..	..	..	..	160
Treasurer should submit his accounts for audit this month						
8th.—Last day for justices to nominate overseers of the poor						
MAY.						
1st.—Return (on or before to-day) to be made to Secretary of State of polling divisions under Ballot Act (section 5)						

* See also paragraph 2 of Part III. of the Third Schedule (page 70).

Reference to the Act of 1882 for specification of dates.						
	Sec.	Subsec.	Para.	Sched.	Part.	Page.
JUNE.						
1st.—Overseers should give notice between this date and 20th to voters who have not paid all poor rates due on Jan. 5th last						
Return of market tolls and other matters to be made to Secretary of State before end of the month (23 & 24 Vict. c. 51, ss. 1 and 2)						
10th.—Town Clerks to issue precepts to overseers to make out lists of parliamentary voters						
20th.—Overseers should affix on or near church doors, &c., for a period including two Sundays at least, notices to persons entitled to vote to make claims before August 25th						
JULY.						
1st.—Copy rules, &c., respecting police to be sent to the Secretary of State by Watch Committee	192	..	..	..	..	160
15th.—Date to which qualification is computed for £10 occupiers and lodgers in connection with parliamentary lists. The latter must claim between August 1st and 25th in the first year, and July 25th every succeeding year. This is also the date for which qualification is computed for the burgess roll	9	2	<i>b</i>	..	..	28
20th.—Assessed taxes and poor rates due Jan. 5th to be paid on or before this day to prevent disqualification for voting	9	2	<i>e</i>	..	..	28
Clerks of the Peace to issue precepts to overseers to make out jury lists						
22nd.—Overseers to make out (and publish for 14 days) list of rate defaulters						
25th.—Lodgers already on parliamentary list must renew their claim not later than this day						
31st.—Overseers to make out a list of persons entitled to vote as occupiers, and also of those (not freemen) entitled in respect of other qualifications, and in boroughs (<i>municipal</i> and <i>parliamentary</i>) of persons entitled to vote as burgesses; the town clerk must make out the freemen's roll <i>see</i>	203	..	..	..	..	166

Reference to the Act of 1882 for specification of dates.						
Sec.	Subsec.	Para.	Sched.	Part.	Para.	Page.
AUGUST.						
1st.—(Note) Borough and county lists of electors to be affixed to church doors (first two Sundays in August). Lodgers claiming for the <i>first time</i> must do so between this date and the 25th . . .						
Freemen's roll must be published on or before to-day . . .						
10th.—Rate books may be inspected until 31st by voters and claimants . . .						
25th.—Last day for serving objections to voters, and for claiming to vote . . .						
29th.—Overseers to send lists of parliamentary electors, claims, and objections to town clerks . . .						
31st.—Last day for inspecting rate books . . .						
SEPTEMBER.						
1st.—Overseers (in boroughs municipal only) to deliver burgess lists to town clerks for public inspection till after 15th . . .	..	..	..	Third	I.	1-2 57
Town clerk to fix same on Town Hall for seven days before 15th . . .	..	..	..	Third	I.	3 57
Objections to parliamentary voters to be affixed to church doors on two Sundays preceeding the 15th inst., and jurors' lists on first three Sundays in September . . .						
15th.—Notices of claims in respect of burgess lists to be delivered to town clerks, and notices of objections to be delivered to them, and to persons objected to on or before this day . . .	..	..	..	Third	I.	4 57
22nd.—Lists of claims and objections to be affixed in some public place until, from this date, 1st October for boroughs not parliamentary . . .	..	..	..	Third	I.	7 57
Earliest day for holding revising barristers' courts for borough voters . . .						
27th.—Notice of holding of revision court to be given if same is to be held on Oct. 1.	..	..	..	Third	I.	11 58
30th.—Town clerks (of boroughs municipal but <i>not</i> parliamentary) must publish seven days before this date the lists of claims and objections in respect of burgess lists	..	..	..	Third	I.	7 57
OCTOBER.						
1st.—Mayors and assessors of boroughs (municipal but <i>not</i> parliamentary) must revise the burgess lists between this date and the 15th	..	..	..	Third	I.	10 57

Reference to the Act of 1892 for specification of dates.

	Sec.	Subsec.	Para.	Sched.	Part.	Para.	Page.
OCTOBER—continued.							
Copy rules, &c., respecting police to be sent to the Secretary of State by the Watch Committee	192	..	..	..	..	..	160
Special constables to be appointed by borough justices during this month . .	196	1	..	..	..	..	161
15th.—Revision court may not be held after this date	..	..	..	Third	I.	25	58
20th.—The burgess roll must be completed on or before this date	45	2	..	..	..	..	58
21st.—Notice of election for the 1st of Nov. should be given by the town clerk not later than to-day	54	..	..	..	..	..	64
24th.—Last day for delivering nominations of councillors to town clerk for election on Nov. 1st	..	..	..	Third	II.	7	65
Notice of nomination to candidates for council on the 1st Nov. should be given to-day	..	..	..	Third	II.	8	66
25th.—Mayor must attend at town hall to receive and decide upon objections, &c., to nominations	..	..	..	Third	II.	9	66
27th.—List of nominations for councillors should be published	..	..	..	Third	II.	15	67
Notice of polling places should be given not later than this date*	..	..	..	Third	IV.	2	79
30th.—Latest day for holding revising barristers' courts							
31st.—Criminal returns should be sent to Home Secretary by clerks to justices .							
NOVEMBER.							
1st.—The new burgess roll comes into operation	45	2	..	..	..	..	58
General election of borough councillors . .	52	..	..	..	..	..	63
9th.—Quarterly—fixed—(and annual) meeting of town councils to be held to-day at noon. First business: Election of mayor, followed by that of sheriff (where there is one); aldermen (every three years); and officers. Quarterly meetings to be fixed for year, and Committees appointed . .	60 61	1-7 1-4					72 73 37
				Second	..	2	
DECEMBER.							
31st.—Last day for revising barrister to deliver to town clerk lists of parliamentary voters							
Parliamentary election lists must be sent to returning officers not later than this date							
Assessment clerks should make out valuation returns							

* See also paragraph 2 of Part III. of the Third Schedule (page 70).

THE MUNICIPAL CITIES AND BOROUGHS OF ENGLAND AND WALES,

Regulated and Governed under the Municipal Corporations Act of 1882 (with the population according to the Census of 1881), on January 1st, 1883.

* *Episcopal and Prescriptive Cities.*

† *Prescriptive Cities only.*

‡ *Cities and Boroughs which are Counties of themselves.*

(a) *Cities and Boroughs (to have a Commission of the Peace) named in Schedule A. and (b) Cities and Boroughs (not to have a Commission of the Peace except on petition and grant) of Schedule B. of the Municipal Corporations Act, 1835; all others have been incorporated since the passing of the 5 & 6 Will. 4, c. 76 (1835) and before the passing of 45 & 46 Viet. c. 50 (1882).*

(Q.S.) *indicates Boroughs having a separate Commission of the Peace and Court of Quarter Sessions.*

(C.P.) *indicates Boroughs having a Commission of the Peace only; in all others the County Magistrates exercise a concurrent jurisdiction with the Mayor and immediate Past Mayor.*

A.			
ABERAVON (C.P.)	4,875	BATLEY (C.P.)	27,514
aABERYSTWTH (C.P.)	6,664	bBEAUMARIS	2,241
aABINGDON (Q.S.)	5,662	bBECCLES	5,721
ACCRINGTON (C.P.)	31,435	aBEDFORD (Q.S.)	19,532
aANDOVER (Q.S.)	5,654	a†BERWICK-ON-TWEED (Q.S.)	13,995
bARUNDEL	2,748	aBEVERLEY (C.P.)	11,442
ASHTON-UNDER-LYNE (C.P.)	37,027	aBEWDLEY (C.P.)	3,088
		aBIDEFORD (Q.S.)	6,512
		BIRKENHEAD (Q.S.)	83,324
		BIRMINGHAM (Q.S.)	400,757
		BLACKBURN (C.P.)	104,012
		BLACKPOOL	14,418
		bBLANDFORD	1,273
		bBODMIN (C.P.)	5,061
		BOLTON (Q.S.)	105,422
		BOOTLE-CUM-LINACRE (C.P.)	27,112
		aBOSTON (C.P.)	14,932
BACUP	25,033	BRADFORD (Yorks.) (Q.S.)	183,032
aBANBURY (Q.S.)	3,600	aBRECON (C.P.)	6,247
BARNLEY	29,789	aBRIDGNORTH (Q.S.)	5,890
aBARNSTAPLE (Q.S.)	12,283	aBRIDGWATER (Q.S.)	12,024
BARROW-IN-FURNESS	47,111	aBRIDPORT (C.P.)	6,790
bBASINGSTOKE (C.P.)	6,681	BRIGHTON (Q.S.)	107,528
*aBATH (Q.S.)	51,790		

*† <i>a</i> BRISTOL (<i>Q.S.</i>)	206,503
<i>b</i> BUCKINGHAM (<i>Q.S.</i>)	3,585
BURNLEY (<i>C.P.</i>)	58,882
BURKLEM	26,521
BURTON-UPON-TRENT	39,285
<i>a</i> BURY St. EDMUNDS (<i>Q.S.</i>)	16,211
BURY (<i>Lanc.</i>) (<i>C.P.</i>)	51,582

C.

<i>b</i> CALNE	2,474
<i>a</i> CAMBRIDGE (<i>Q.S.</i>)	35,372
*† <i>a</i> CANTERBURY (<i>Q.S.</i>)	21,701
<i>a</i> CARDIFF (<i>C.P.</i>)	85,378
<i>b</i> CARDIGAN (<i>C.P.</i>)	3,633
* <i>a</i> CARLISLE (<i>Q.S.</i>)	35,866
† <i>a</i> CARMARTHEN (<i>Q.S.</i>)	10,512
<i>a</i> CARNARVON (<i>C.P.</i>)	10,237
<i>b</i> CHARD	2,411
CHELTENHAM	43,972
*† <i>a</i> CHESTER (<i>Q.S.</i>)	36,788
<i>a</i> CHESTERFIELD (<i>C.P.</i>)	12,221
* <i>a</i> CHICHESTER (<i>Q.S.</i>)	8,092
<i>b</i> CHIPPENHAM	1,352
<i>b</i> CHIPPING NORTON	4,167
<i>b</i> CHIPPING WYCOMBE (<i>C.P.</i>)	10,618
CHORLEY	19,472
<i>a</i> CLITHEROE (<i>C.P.</i>)	10,177
<i>a</i> COLCHESTER (<i>Q.S.</i>)	28,395
<i>a</i> CONGLETON (<i>C.P.</i>)	11,116
CONWAY	3,179
† <i>a</i> COVENTRY (<i>C.P.</i>)	42,111
CREWE (<i>C.P.</i>)	24,372

D.

DARLINGTON (<i>C.P.</i>)	35,102
<i>a</i> DARTMOUTH (<i>Q.S.</i>)	5,580
<i>b</i> DAVENTRY	3,859
<i>a</i> DEAL (<i>Q.S.</i>)	8,422
<i>a</i> DENBIGH (<i>C.P.</i>)	6,491
<i>a</i> DERBY (<i>Q.S.</i>)	80,410
<i>a</i> DEVIZES (<i>Q.S.</i>)	6,645
DEVONPORT (<i>Q.S.</i>)	48,745
DEWSBURY (<i>C.P.</i>)	29,617
<i>a</i> DONCASTER (<i>Q.S.</i>)	21,130
<i>a</i> DORCHESTER (<i>C.P.</i>)	7,568
<i>a</i> DOVER (<i>Q.S.</i>)	28,486
<i>b</i> DROITWICH (<i>C.P.</i>)	3,761
DUDLEY (<i>C.P.</i>)	46,233
DUNSTABLE (<i>C.P.</i>)	4,627
* <i>a</i> DURHAM (<i>C.P.</i>)	14,932

E.

<i>a</i> EVESHAM (<i>C.P.</i>)	5,112
*† <i>a</i> EXETER (<i>Q.S.</i>)	37,608
<i>b</i> EYE (<i>C.P.</i>)	2,296

F.

<i>a</i> FALMOUTH (<i>C.P.</i>)	4,373
<i>b</i> FAVERSHAM (<i>Q.S.</i>)	8,627
<i>b</i> FLINT (<i>C.P.</i>)	5,126
<i>b</i> FOLKESTONE (<i>Q.S.</i>)	18,887

G.

<i>a</i> GATESHEAD (<i>C.P.</i>)	65,873
<i>b</i> GLASTONBURY	3,719
GLOSSOP (<i>C.P.</i>)	19,574
*† <i>a</i> GLOUCESTER (<i>Q.S.</i>)	36,552
<i>b</i> GODALMING (<i>C.P.</i>)	2,505
<i>b</i> GODMANCHESTER	2,188
<i>a</i> GRANTHAM (<i>Q.S.</i>)	16,886
<i>a</i> GRAVESEND (<i>Q.S.</i>)	23,375
<i>a</i> GRIMSBY (GREAT) (<i>C.P.</i>)	29,682
<i>a</i> GUILDFORD (<i>Q.S.</i>)	10,858

H.

HALIFAX (<i>C.P.</i>)	73,633
HANLEY (<i>Q.S.</i>)	48,354
HARTLEPOOL	12,684
<i>a</i> HARWICH (<i>C.P.</i>)	7,810
<i>a</i> HASTINGS (<i>Q.S.</i>)	42,256
† <i>a</i> HAVERFORDWEST (<i>Q.S.</i>)	6,393
HEDON	966
<i>b</i> HELSTON (<i>Q.S.</i>)	3,432
* <i>a</i> HEREFORD (<i>Q.S.</i>)	19,822
<i>a</i> HERTFORD (<i>C.P.</i>)	7,585
HEYWOOD (<i>C.P.</i>)	23,050
HONITON	3,349
HUDDERSFIELD (<i>C.P.</i>)	81,825
† <i>a</i> HULL (Kingston - upon - Hull) (<i>Q.S.</i>)	154,250
<i>b</i> HUNTINGDON	4,229
HYDE	28,629
<i>b</i> HYPHE (<i>Q.S.</i>)	4,069

I.

<i>a</i> IPSWICH (<i>Q.S.</i>)	50,762
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J.

JARROW-ON-TYNE (<i>C.P.</i>)	25,531
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K.

<i>a</i> KENDAL (<i>C.P.</i>)	13,696
<i>a</i> KIDDERMINSTER (<i>C.P.</i>)	24,270

<i>a</i> KING'S LYNN (<i>Q.S.</i>)	18,475
<i>a</i> KINGSTON - UPON - THAMES (<i>C.P.</i>)	19,875

<i>a</i> OSWESTRY (<i>Q.S.</i>)	7,851
OVER DARWEN (<i>C.P.</i>)	29,747
* <i>a</i> OXFORD (<i>Q.S.</i>)	35,929

L.

<i>a</i> LANCASTER (<i>C.P.</i>)	20,724
<i>b</i> LAUNCESTON	3,217
LEAMINGTON (<i>C.P.</i>) (Royal Leam- ington Spa)	22,976
<i>a</i> LEEDS (<i>Q.S.</i>)	309,126
<i>a</i> LEICESTER (<i>Q.S.</i>)	122,351
<i>a</i> LEOMINSTER (<i>C.P.</i>)	6,042
LEWES	11,199
* <i>†a</i> LICHFIELD (<i>Q.S.</i>)	8,360
* <i>†a</i> LINCOLN (<i>Q.S.</i>)	37,312
<i>a</i> LISKEARD (<i>C.P.</i>)	4,479
* <i>a</i> LIVERPOOL (<i>Q.S.</i>)	552,425
<i>b</i> LLANDOVERY	2,035
<i>b</i> LLANIDLOES	3,421
LONGTON (<i>C.P.</i>)	18,615
<i>a</i> LOUTH (<i>C.P.</i>)	10,690
<i>a</i> LUDLOW (<i>Q.S.</i>)	5,035
LUTON (<i>C.P.</i>)	23,959
<i>b</i> LYME REGIS (<i>C.P.</i>)	2,043
<i>b</i> LYMINGTON	2,431

M.

<i>a</i> MACCLESFIELD (<i>C.P.</i>)	37,514
<i>b</i> MAIDENHEAD (<i>C.P.</i>)	8,219
<i>a</i> MAIDSTONE (<i>Q.S.</i>)	29,638
<i>a</i> MALDON (<i>Q.S.</i>)	5,476
* <i>a</i> MANCHESTER (<i>Q.S.</i>)	341,508
MARGATE (<i>Q.S.</i>)	15,889
<i>b</i> MARLBOROUGH (<i>C.P.</i>)	3,343
MIDDLESBOROUGH (<i>C.P.</i>)	55,288
<i>a</i> MONMOUTH (<i>C.P.</i>)	6,112
<i>b</i> MORPETH	4,556

N.

<i>a</i> NEATH	10,447
<i>a</i> NEWARK (<i>Q.S.</i>)	14,019
<i>a</i> NEWBURY (<i>Q.S.</i>)	10,143
<i>a</i> NEWCASTLE - UNDER - LYME (<i>Q.S.</i>)	17,506
* <i>†a</i> NEWCASTLE - UPON - TYNE (<i>Q.S.</i>)	145,223
<i>a</i> NEWPORT (I. of W.) (<i>C.P.</i>)	9,430
<i>a</i> NEWPORT (Mon.) (<i>C.P.</i>)	35,382
<i>a</i> NORTHAMPTON (<i>Q.S.</i>)	51,880
* <i>†a</i> NORWICH (<i>Q.S.</i>)	87,843
* <i>†a</i> NOTTINGHAM (<i>Q.S.</i>)	186,656

O.

OLDHAM (<i>C.P.</i>)	111,343
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P.

<i>a</i> PEMBROKE (<i>C.P.</i>)	14,197
<i>b</i> PENRYN (<i>C.P.</i>)	3,463
<i>a</i> PENZANCE (<i>Q.S.</i>)	11,684
* <i>a</i> PETERBOROUGH	21,219
<i>a</i> PLYMOUTH (<i>Q.S.</i>)	75,096
<i>a</i> PONTEFRAC (Q.S.)	8,798
* <i>†a</i> POOLE (<i>Q.S.</i>)	12,303
<i>a</i> PORTSMOUTH (<i>Q.S.</i>)	127,953
<i>a</i> PRESTON (<i>C.P.</i>)	96,532
<i>b</i> PWLLHELI	3,239

R.

<i>a</i> READING (<i>Q.S.</i>)	42,050
REIGATE (<i>C.P.</i>)	18,656
<i>b</i> RETTFORD (EAST) (<i>C.P.</i>)	9,748
<i>a</i> RICHMOND (Yorks.) (<i>Q.S.</i>)	4,502
* <i>a</i> RIPON (<i>C.P.</i>)	7,390
ROCHDALE (<i>C.P.</i>)	68,865
* <i>a</i> ROCHESTER (<i>Q.S.</i>)	21,590
<i>a</i> ROMSEY (<i>C.P.</i>)	4,204
ROTHERHAM (<i>C.P.</i>)	34,782
<i>b</i> RUTHIN	3,034
RYDE (<i>C.P.</i>)	11,422
<i>b</i> RYE (<i>Q.S.</i>)	4,220

S.

<i>a</i> SAFFRON WALDEN (<i>Q.S.</i>)	6,056
* <i>a</i> St. ALBANS (<i>C.P.</i>)	10,930
St. HELENS (<i>C.P.</i>)	57,234
<i>a</i> St. IVES (Cornwall) (<i>C.P.</i>)	6,441
St. IVES (Hunts)	3,036
SALFORD (<i>C.P.</i>)	176,233
* <i>a</i> SALISBURY (<i>Q.S.</i>)	14,576
<i>b</i> SANDWICH (<i>Q.S.</i>)	2,846
<i>a</i> SCARBOROUGH (<i>Q.S.</i>)	30,484
<i>b</i> SHAFTESBURY	2,312
SHEFFIELD (<i>Q.S.</i>)	284,410
<i>a</i> SHREWSBURY (<i>Q.S.</i>)	26,478
* <i>†a</i> SOUTHAMPTON (<i>Q.S.</i>)	60,235
<i>b</i> SOUTH MOLTON (<i>Q.S.</i>)	3,340
SOUTHPORT (<i>C.P.</i>)	32,191
SOUTH SHIELDS (<i>C.P.</i>)	56,922
<i>b</i> SOUTHWOLD (<i>C.P.</i>)	2,111
<i>a</i> STAFFORD (<i>C.P.</i>)	19,982
STALYBRIDGE (<i>C.P.</i>)	22,784
<i>a</i> STAMFORD (<i>Q.S.</i>)	8,775
<i>a</i> STOCKPORT (<i>C.P.</i>)	59,544
<i>a</i> STOCKTON-ON-TEES (<i>C.P.</i>)	41,040
STOKE-UPON-TRENT	19,263
<i>b</i> STRATFORD - UPON - AVON (<i>C.P.</i>)	8,053

<i>a</i> SUDBURY (<i>Q.S.</i>)	6,584
<i>a</i> SUNDERLAND (<i>C.P.</i>)	116,262
<i>a</i> SWANSEA (<i>C.P.</i>)	63,739

T.

<i>b</i> TAMWORTH (<i>C.P.</i>)	4,888
TAUNTON	16,611
<i>b</i> TENBY (<i>C.P.</i>)	4,783
<i>b</i> TENTERDEN (<i>Q.S.</i>)	3,620
<i>a</i> TEWKESBURY (<i>Q.S.</i>)	5,100
<i>b</i> THETFORD (<i>Q.S.</i>)	4,034
<i>a</i> TIVERTON (<i>Q.S.</i>)	10,462
<i>b</i> TORRINGTON (<i>GREAT</i>)	3,445
<i>b</i> TOTNES (<i>C.P.</i>)	4,089
* <i>a</i> TRURO (<i>C.P.</i>)	10,663
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W.

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<i>b</i> WALLINGFORD (<i>C.P.</i>)	2,803
<i>a</i> WALSALL (<i>Q.S.</i>)	58,808
WARRINGTON (<i>C.P.</i>)	41,456
<i>a</i> WARWICK (<i>Q.S.</i>)	11,802
<i>a</i> WELSHPOOL (<i>C.P.</i>)	7,090
* <i>a</i> WELLS (<i>C.P.</i>)	4,633
<i>a</i> WENLOCK (<i>Q.S.</i>)	19,474
WEST BROMWICH	56,299
<i>a</i> WEYMOUTH (<i>C.P.</i>)	13,704
<i>a</i> WIGAN (<i>Q.S.</i>)	48,196
* <i>a</i> WINCHESTER (<i>Q.S.</i>)	17,469
<i>a</i> WINDSOR (<i>Q.S.</i>)	12,273
<i>a</i> WISBECH (<i>C.P.</i>)	9,248
WOLVERHAMPTON (<i>Q.S.</i>)	75,738
* <i>†a</i> WORCESTER (<i>Q.S.</i>)	33,955
WREXHAM (<i>C.P.</i>)	10,928

Y.

<i>a</i> YARMOUTH (<i>GREAT</i>) (<i>Q.S.</i>)	46,211
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17	2	..	..	..	..	34
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17	3	..	..	..	..	35
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17	4	..	..	..	..	35
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20	..	..	..	..	..	35
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21	1	..	..	..	..	36
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al corporation for each financial

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28	1	..	..	..	..	42
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28	2	..	..	..	..	42
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if none, or incapable of acting, all acts

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43	..	..	..	..	..	54
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45	1	..	..	..	..	58
----	---	----	----	----	----	----

cause lists and burgess roll to be

printed, and deliver copies to any per-

son on payment

48	1	..	..	..	..	61
----	---	----	----	----	----	----

proceeds to go to the borough fund sub-

ject to proviso

48	2	..	..	..	..	61
----	---	----	----	----	----	----

to arrange names of non-resident lists,

viz., of persons entitled in respect of

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cillors although resident within fifteen

but beyond seven miles of the borough

in a separate list at the end of the

burgess roll

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give nine days' notice of election of

councillors

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from chairman, and to keep same . .

60	5	..	..	..	..	73
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66	1	..	..	..	..	75
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casual vacancy of the office of mayor

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66	2	..	..	..	..	75
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dents, or refusing to allow lists to be

inspected

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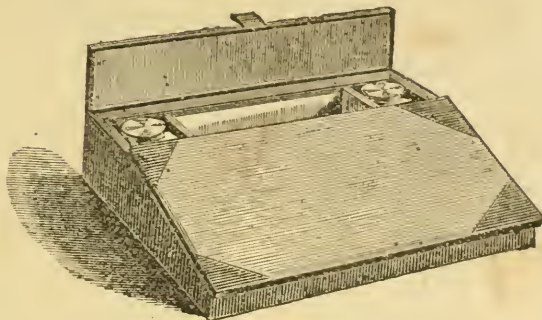
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